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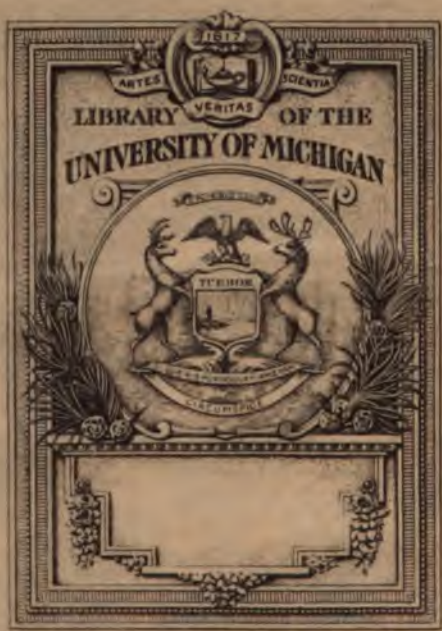
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THE WORKING CONSTITUTION OF THE UNITED KINGDOM

THE

WORKING CONSTITUTION

OF THE

UNITED KINGDOM

BY

LEONARD COURTNEY

New York
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1908

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PREFACE

MANY shortcomings will doubtless be discovered in this little book, and some errors. I hope the latter are not numerous. If I have an opportunity, I shall gladly correct any that are pointed out. I have already to acknowledge the assistance of several friends in the performance of a work attended with some special difficulties. Mr. Roby and Mr. H. Hobhouse, M.P., have most kindly read the proofs and have given me most useful hints and corrections. The sections on 'India,' the 'Isle of Man,' and Scottish Institutions have been severally submitted to three friends of the highest authority on these subjects respectively, whom I do not name because I would not have them counted responsible for what is written, but on whose support I can confidently rely as an assurance against serious errors.

Lastly, I have to acknowledge the assistance of my secretary, Mr. George Unwin, without whose aid my task would not have been performed. Every word has been written by him at my dictation, and he has been unwearied in the verification of authorities, in

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the examination of details not at the command of my memory, and in suggestions for the amendment of what was faulty and elucidation of what was obscure. The side-notes are mainly due to him, and the Index at the end of the volume is entirely his work.

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Part I

PARLIAMENT

be to examine the situation as it now exists, including in such examination some attempt to detect the forces which are operative towards the production of the further changes which we know will in due course be developed.

The Supremacy of Parliament.

The fundamental fact of our Constitution is the absolutely unqualified supremacy of Parliament. In it is embodied the supreme will of the State; and though that will may declare itself in a different and even contradictory fashion from time to time, yet at any moment its expression is final and conclusive. The laws of the United Kingdom are made by Parliament, and the administration of public affairs, whether national or local, is everywhere subordinate to the authority of Parliament. The mode of subordination may and does vary. The formalities regulating the exercise of its authority have, in some cases, been made so difficult by the will of Parliament itself, that this authority, supreme though it be, cannot be used except on the rarest occasions; and the subordinate powers, thus protected from hasty interference, are sometimes spoken of as independent. But even the highest of them do their work subject to parliamentary control. Parliament, it must be repeated, is supreme, and Parliament consists of the Crown, the House of Lords, and the House of Commons. Parliament expresses its will in the conduct of a Ministry which it supports and maintains, and in legislative Acts agreed upon by the Houses of Lords and Commons, and approved by the Crown; but it is now nearly two hundred years since the Crown withheld its approval of a legislative Act agreed upon by the two Houses, and this approval has now for a long time been a formality

that could not be withheld. The influence of the Crown, as must be explained hereafter, is now exercised in a different fashion, and the possibility of the Crown refusing to assent to what has been agreed upon by both Houses may truly be described as inconceivable. The two Houses may, however, differ between themselves; and the question arises how such differences are in fact settled. An agreement may be established by one of the two giving way to the other. The House of Lords consists of some five hundred and eighty noblemen, to whom additions are constantly made, whose legislative privileges descend exclusively through males, except in a few cases in which they pass through females to male descendants. The House of Commons, on the other hand, consists of six hundred and seventy gentlemen, elected by constituencies into which the kingdom is divided, for a period of seven years; but it may be dissolved, and a General Election ordered before the expiration of that period. It is obvious that the balance of judgment in the House of Lords may be altered by an addition of new members to its body or by a change or submission of opinion among existing members; whilst the balance of judgment in the House of Commons may be confirmed or altered as the result of a General Election. It is through a General Election that the authoritative means of settling a difference between the two Houses is now found. If the result of the Election is a House of Commons the majority of whose members support the line taken by the House of Lords, the difference disappears and the Lords have their way. If, on the other hand, the majority of the new House are of the same opinion as the previous majority, and the ques-

How unity of determination is secured.

tion in dispute has held a foremost place during the Election, it is now recognised to be the duty of the House of Lords to give way. Other methods of solving the difficulty of a difference between the two Houses may exist, and might be called into operation should necessity arise; but the one clear method of solution upon which all are at present agreed is that which has been stated.

The ultimate appeal is to a General Election.

This conclusion is founded upon the principle that the will of the nation finds its most absolute expression in the judgment of the House of Commons elected for the purpose of ascertaining its will upon some definite issue; and this principle is in fact now admitted by all parties as beyond controversy. No one ever questions the guidance of a General Election. The force which it expresses is a constant subject of appeal as the ultimate power of the State. Whilst the period of a House of Commons is running, and even when it is approaching its term, it is most customary to hear the advocate of a proposed law declare his confident belief that 'the proposal has the support of the country,' or 'that the great majority of the nation is in its favour,' or 'that the constituencies throughout the kingdom will approve of it,' and to find an opponent of the measure in question appealing in the same phrases and with equal confidence to the judgment of the nation as against it. Such language is not confined to debates in the House of Commons. It is in complete harmony with the opinions expressed in the current literature of the day. It embodies with great exactness the underlying thought of the mass of the people: first, that the country must be ruled in accordance with the will of the nation; next,

that that will is most faithfully expressed in the result of any General Election; and thirdly, that the House of Commons as the embodiment of that will has a claim to predominance, at least until circumstances change so as to qualify its title as a faithful reflex of the national judgment.

The principle thus recognised, that a House of Commons issuing from a General Election is the most authoritative expression of the will of the nation, involves as an inevitable consequence the further principle that the administration of public affairs and the guidance of legislation should be entrusted to persons approved by a majority of the House. The work of the State is discharged by a very large number of men, who practically continue in office during good behaviour, and have a permanency of duties; but the heads of the several departments, who are responsible to Parliament for the conduct of them, are Ministers whose tenure of office must depend upon their command of the confidence of the House of Commons. These high functionaries, styled Ministers of the Crown, are nominally appointed by the Crown, but they must, as a whole, possess the confidence of the Commons. If the result of a General Election is that a majority of the new House is in disagreement with the policy of the existing Ministry, a change of Ministers necessarily follows. This was formerly secured by an address on the part of the new House to the Crown praying for a change, and the old Ministers continued to hold office until action of this kind was taken. If there is any uncertainty as to the composition of the new House, or if the majority, though definite, is not large, the existing Ministers may and do

The Ministry must possess the confidence of the Commons,

still wait for a formal adverse vote; but on four occasions, when the will of the nation appeared to be decisively expressed against the Ministers of the Crown, these resigned their functions immediately the results of the Election were known, without meeting Parliament. In 1868, when the question of the disestablishment and disendowment of the Irish Church was the issue submitted to the constituencies, Mr. Disraeli and his colleagues, who had opposed the proposal, resigned office as soon as the last election was declared. In 1874 Mr. Gladstone followed this precedent, and resigned without meeting Parliament; and in 1880 Mr. Disraeli again resigned the moment his defeat at the polls was complete. Once more, in 1886 Mr. Gladstone accepted the defeat of Home Rule at the polls, and resigned before Parliament met. These precedents were not followed in 1892, when the Ministers who were defeated reverted to the older practice, and retained office till the House of Commons met and passed an adverse vote; the majority against them being indeed much less decisive than those on the former occasions. But the convenience of the practice begun in 1868, and thrice followed since, is incontestable, and it affords a most significant illustration of the supremacy of the authority exercised by the constituencies.

and must retain it

The accord between the House of Commons and the Ministers of the Crown, which must be established at the commencement of Parliament, if it does not already exist, remains the dominant principle as the period of Parliament goes on. This accord may be lost by changes in the conduct of the Ministry which are condemned by the House of Commons, or by a change

in the House of Commons itself, shifting its balance from one side to the other. A vote of the House adverse to the judgment of the Ministry may indeed arise upon some secondary matter, or even through an accidental combination, and such a vote need not be regarded as significant, nor attended by serious consequences. A Ministry, conscious of growing divergence between itself and the House of Commons, or embarrassed by other difficulties in the conduct of administration or legislation, may however treat as serious an adverse vote which in itself is trivial, and the same results follow as if the vote had been a premeditated and indubitable declaration of want of confidence. Such a situation, however created, must be followed by a resignation of the Ministry, unless Ministers act on the belief that the House of Commons no longer reflects the balance of judgment of the constituencies, and accordingly advise the Crown to dissolve Parliament. The Crown has never, during the present reign, refused to accept and act upon such advice, but it would be too much to declare that it could not be declined. In the self-governing colonies, where Parliaments have been established on the pattern of that of the United Kingdom, and where the Governor bears the same relation to his Ministers as the Crown bears to its Ministers at home, the advice to dissolve the Assembly corresponding to the House of Commons has been often rejected. This has been done where the Assembly has been very recently elected, and the Governor for this, or for some reason in his judgment equally cogent, believes that it reflects the will of the constituencies, and that a new election is uncalled for,

May the Crown refuse to dissolve Parliament?

and would be vexatious. The Governor, however, in refusing to accept the advice to dissolve, must be prepared to accept the resignation of his Ministers; and his refusal can be maintained only where he finds other men ready to undertake the ministerial functions. Could similar circumstances arise in the United Kingdom, the Crown might be found acting, as its viceregents have acted; and the fact that the Crown has not during the present reign so acted may be due to this, that a dissolution has never been advised except under conditions making it reasonable and proper. The fundamental principle is in any case clearly established that the Ministers of the Crown cannot remain in office without the support and confidence of the House of Commons, unless the right of the House of Commons to represent the will of the nation is seriously disputed, and it is intended forthwith to appeal to the constituencies to decide the dispute.

Can Ministers with a majority be dismissed?

A principle correlative to that just enunciated may here be examined. Ministers must enjoy the confidence of the House of Commons to remain in office; and we have seen that colonial Governors have sometimes refused to accept the advice of Ministers who, having lost that confidence, had recommended a dissolution of the popular assembly. Is it true that, as long as Ministers retain the confidence of the House of Commons, they are entitled to remain in office, or may the Crown dispense with their services and call upon new Ministers to test the judgment of the nation by a dissolution? It was long understood that King William IV. exercised the right thus suggested when, in the autumn of 1834, he dismissed Lord Melbourne's

Government, which undoubtedly possessed the support of the House of Commons, a step followed by the acceptance of office by Sir Robert Peel and a dissolution of Parliament. The result was the election of a new House of Commons still hostile to Sir Robert Peel, who, after vainly struggling with an adverse majority, resigned; and this result must be regarded as a condemnation of the dismissal of the former Ministry, if that is to be treated as an act of the Crown based upon an apprehension that Lord Melbourne and the House that supported him were both out of accord with the nation. It became clear, however, through the publication of Lord Melbourne's papers in 1889, that he himself suggested and almost invited the dismissal of the Ministry by the King; and though it may be true that this action was not the outcome of an united Ministry, it is certain that Lord Melbourne's dismissal was not the spontaneous and unprompted act of the King. This case, strictly examined, is scarcely an exception to the rule which has prevailed throughout the whole period of the United Kingdom, that the Crown does not of its own mere motion dismiss a Ministry possessing the confidence of the House of Commons.

Precedent in New Brunswick.

The records of colonial history furnish us with a couple of cases — apparently only a couple — in which a Governor claimed and exercised the right not used by the Crown. In 1855 the Legislature of New Brunswick, then a separate colony, passed a prohibitory liquor law, and the Governor, after some experience of its operation, or want of operation, sent a minute to his Ministers expressing his conviction

'that a continuance of the existing condition of affairs was fraught with peril to the best interests of the community,' and advised a dissolution 'with a view to a decided expression of public opinion in favour of, or in opposition to, the prohibitory principle.' The Ministry demurred to the proposal, and the Governor pressing it to the point of ordering a dissolution, they resigned. Other Ministers took their place and carried through an election, which was immediately followed by an extra Session, when both Houses expressed their satisfaction at the Governor's judicious exercise of his constitutional powers and at the promptitude with which he had had recourse to the advice of Parliament; and the Act of the preceding legislature was immediately repealed by thirty-eight to two in the Lower, and without a division in the Upper House. In this case the result may be taken as attesting the constitutionality of the action of the Governor. The justification of the case is strictly deducible from the principle that supreme authority is to be found in the decision of the constituencies; but it must be admitted that the responsibilities of Ministers supporting any Governor in the exercise of such a prerogative would be found excessive if the result proved a miscarriage.

Another case in Cape Colony.

The second case was that of the dismissal of Mr. Molteno and his colleagues in the Cape Ministry by Sir Bartle Frere in 1877. The Cape Parliament was not sitting, and a difference arose between the Governor and his Government respecting the co-ordination of the Colonial and Imperial forces in military operations then in progress. Sir Bartle Frere dismissed

Mr. Molteno, having found other advisers ready to take office. But the case differs from that of New Brunswick in that the Cape House of Assembly, upon meeting again for business, supported the new Ministry by a decisive majority, thus condemning Mr. Molteno, who had before enjoyed its confidence; and the necessity did not therefore arise of appealing to the electorate. These acts of colonial Governors are illustrations of what might be conceivably done by the Crown; but they have no parallel in our history during this century.

Prime authority of Commons

The result of an analysis of the present working of the Constitution may be summed up in the phrase that the House of Commons is the prime organ of the national will. It is always unconsciously admitted that the ultimate spring of government rests in the will of the people, and this underlying principle finds expression in a hundred forms of familiar speech. In the election of a new House of Commons the sense of the country is taken; and the authority of the new House is accepted as indisputable in connection with the issue or issues presented at the election. The authority abides until some occasion arises when it is seriously questioned whether the view of the majority of the House remains in accord with the national will; and if it is disregarded on the ground that the majority has ceased to represent the policy approved by the nation, the dispute can only be solved by another General Election.

retained through many changes.

These principles have guided the action of all parties for more than a century, and it is to be noted that the same absolute acceptance of the result of the General

Election, as an expression of the national will, has prevailed throughout the most striking changes in the essential facts of a General Election. Whatever the discontents of some or even of a large number in former generations concerning the distribution of electoral power, the use and habit of speech and thought accepted the House of Commons as the expression of the national will; the mass of each generation not disputing the circumstances of its time, if not always regarding them as beyond enquiry. Up to 1832 the majority of the members of the House of Commons (in England, as much as five-sixths) were elected by boroughs, and, in the bulk of them, the privilege of voting was restricted to a few men, often absolutely subservient to the will of one man, the real owner of the borough, who sold or gave away its right to representation at his pleasure. Many, perhaps most, of these borough-owners were members of the House of Lords. A General Election before 1832 would seem to us now to be most defective and unreal as an appeal to the nation; yet men talked then, as they do to-day, of taking the sense of the country; and the authority of the House of Commons, when elected, was accepted as supreme. After the great change of 1832 there was a disfranchisement of the smallest boroughs, an enfranchisement of new large boroughs, and an increase of county members by division of counties; but the right of voting remained limited in boroughs to householders inhabiting houses of the annual value of £10 or upwards, while in counties the voting was confined to owners of real property and occupiers of the value of £50 or more. The change was enormous, but the

voters remained a limited class, and the extreme disparity in the size of boroughs necessarily occasioned great inequalities in electoral influence among voters; but the House of Commons that issued from a General Election under the new conditions was accepted, as before, as an indisputable exponent of the national will. The changes of 1867–68 extended the privileges of voting in boroughs to all householders, irrespective of value; and the still greater change of 1884, conferring the same rights on householders in counties, and accompanying the extension of franchise by considerable redistribution of electoral districts, has left us using the same phrases and accepting the authority of the House of Commons with the same unqualified submission. This continuity in the regard paid to the House of Commons has sometimes led to the suggestion that the changes which have been made in the processes of its election have been really unimportant, because, under all conditions, what is called public opinion has permeated the House and has stamped it with its true claim to represent the national will. Even before 1832 there were some open boroughs with large masses of voters; and the voting in counties, though confined to owners of real property, was free; and the manifestation of opinion secured in these elections insensibly influenced the patrons of the close boroughs and their nominees, thus producing a final resultant which, it is argued, did roughly correspond to the will of the nation. So again, after 1832, the opinion of those excluded from the vote affected the privileged voters and the representatives of privileged voters, producing once again, it is urged, a trustworthy

This explained by the pervasive power of public opinion.

presentment of the sense of the country. There is some ground for this reasoning; but if it be true, as suggested, that the opinion of outsiders influences the possessors of privilege, it is equally true that the possession of privilege influences outside opinion, and it may be doubted whether, on the whole, there is not a greater tendency to mould opinion in accordance with the influence of power, than to mould the exercise of power in accordance with the influence of opinion.

Inadequacy of this agency.

Present tendency of electoral reform

The essential fact to which I recur is that we are not very different to-day from those who have gone before us in accepting the House of Commons as the prime organ of the national will; and this provokes the suggestion that, as we wonder at the prevailing acquiescence by successive generations in things as they were, so those who follow us may wonder at our unenquiring acquiescence in the organisation of our own time. We are indeed approaching a certain simplicity of electoral ideals, and it is not difficult to suggest some changes that may be confidently anticipated. The alterations that have been made, at least since 1832, have been effected by adding new franchises to those already in existence, thus producing an overlapping of voting powers and an embarrassing accumulation of electoral privileges. The main facts, however, are that every male householder is entitled, after a prescribed term of residence, to vote in the borough or county in which he lives, and that every male owner of real property, of a certain small value, is entitled to vote in the county in which it is situate. There are other qualifications which need not be now stated, but it will be seen, from what has been said, that a man

may be entitled to vote in more places than one. The last great arrangement of constituencies in 1884 proceeded on the plan of subdividing counties and the larger towns into constituencies, each returning one member, although a few of the larger towns, returning two members, were left undivided. The rearrangement involved also an approximation to equality in size (having regard to population rather than area) of constituencies, although, out of tenderness to existing privileges, some small towns with inferior claims in respect to population were left with a member. A full examination would compel a comparison between the representation of Great Britain and of Ireland; but, putting that aside for the present, it may be confidently asserted that the tendency in Great Britain is at present towards constituencies equal in size and with one member apiece, involving an absorption of smaller boroughs, some fresh arrangement of county divisions, and a subdivision of larger boroughs now returning two members.

Is towards equal single-member constituencies.

Reverting to the rights of voters and the suggested possibility that a voter might be entitled to vote for more places than one, it may now be stated that a voter is entitled to vote in every county division and in every borough in which he has a qualification. Where a borough is subdivided, he can only vote in one of its divisions, though he may have qualifications entitling him to vote in more than one. The organisation thus described in outline is in itself suggestive of change. The tendency to equality of constituencies has been noted. A simplification of the franchise, at least to the extent of reducing all existing occupation fran-

'One man one vote,' 'One vote one value.'

chises to one, may also be anticipated. An attack upon the ownership franchise may not be so imminent; but its practical importance would be destroyed, if the change were realised, which has been called for, taking away the right to vote in more than one constituency at any election. The agitation for this change has found expression in the formula 'one man one vote,' and the strength of the principle underlying this formula is confessed and insisted upon rather than contradicted by those who would add to it the words 'and every vote an equal value.' The ideal to which the authors of the formula and the authors of the addition are alike moving, is an equality of power on the part of the electors, but though the attraction of this ideal is largely confessed, there may be a prolonged delay in ascertaining the form in which it should be realised.

Woman franchise.

The change last suggested must be approached from another quarter, in order to be fully understood, and the path we have to tread leads to another large change which has now for some time been a subject of debate. The House of Commons is accepted as the prime organ of the will of the nation, and it appears that it is elected by male voters, possessing certain qualifications, and voting in defined constituencies. Have women no share in the determination of the will of the nation? And if it must be confessed, from the nature of things, that they contribute towards its development, must their share in its expression be confined to such indirect influence as they can exercise over men who are privileged to vote? The argument that they have large, material, and sufficient influence without voting, is such as has always been used with respect to unen-

franchised classes, but has been found ineffective to stem successive demands for the enfranchisement of men. A direct claim for the enfranchisement of women, possessing the same qualification as men, was first made in 1867; but it has never yet been adopted by any Ministry. Successive governments have, however, treated it as an open question when not proposed as an embarrassing addition to their own legislative projects; and on all the occasions since the General Election of 1880 when it has been submitted to the House of Commons, as a question to be determined apart from ministerial influence, it has been approved by a majority of those voting. It is evident that, whenever the time comes for the serious reconsideration of the conditions of parliamentary franchise, this question will be pressed to a decision, though it may be unwise to hazard any definite opinion as to the result.

Defects in present electoral machinery.

The accuracy of the fundamental assumption, so universally made, that the House of Commons, on the morrow of a General Election, is an indisputable exponent of the will of the nation, must be examined in another light. It seems to be generally thought that, if the country were parcelled out into constituencies of equal size, each represented by one member (the form towards which it has been suggested our electoral organisation is moving), the balance of judgment among the members then elected would correspond with trustworthy accuracy to the balance of judgment among the whole mass of electors. To put the matter in other words, it is tacitly and almost universally believed that, if the issue presented to the nation was whether the policy of Mr. A or Mr. B

should be adopted, the answer made by the members elected by the constituencies would be the same as that made if all the electors of all the constituencies voted together. It is upon this assumption that the result of a General Election is accepted as a declaration of the national will. This assumption is, however, one that would be often falsified in fact even though the most absolute equality of size were established among the constituencies; nor would the falsification arise from the circumstance that some voters were allowed to vote in more than one constituency, supposing that privilege still to be maintained. The exercise of more than one vote operates equally in both the contemplated processes of ascertaining the national will, and therefore does not explain the discordance between the results of the two processes. Whenever that discordance appears, it will be found due to the fact that the distribution of opinion is not uniform throughout the nation, and that a division of the nation into constituencies, however honestly made, introduces an element of chance in the presentment of collected opinion. Owing to this unevenness of distribution of opinion throughout the country it may easily happen that the determination of the national judgment, as ascertainable by testing the constituencies separately, differs from what it would be if the nation could be consulted as one constituency.

An illustration.

An illustration of a simple character will make plain the arbitrariness of the assumption so universally made, and the reason why it must often be falsified. Suppose three contiguous constituencies, each with 5000 voters, making therefore 15,000 in all, and a choice between

A and B being presented to the three constituencies, the first declared by 4000 in favour of A against 1000 for B; whilst each of the other two gave A 2000 and B 3000. The result would be that, on the vote of the three, A would have 8000 supporters as against 7000 for B, but, as represented by persons elected, B would have two supporters as against one for A. It will be seen that the miscarriage of representation shown in this example arises from the fact that the force of the party A is congested in the first constituency, and it would have been possible to have parcelled out the constituencies differently, so that the party A should have been in the majority in two, or indeed in all three of them—the last result, excluding party B from representation altogether, being only less unfortunate than the first, which gave it, though numerically inferior, the larger representation. In the absence of special political calculation and design, when, that is to say, constituencies are arranged from considerations of geographical convenience only, a grave element of chance is evidently introduced in the working of the representative machinery of the country, organised in the way contemplated. It may indeed be said with some truth that when some hundreds of constituencies are arranged in a large area, errors of chance must counterbalance one another, but this only means that they would not all be accumulated on one side, and the way in which the balance of errors lies must remain a matter of chance. It is only through repeated practical experiments, enabling us to compare the relative strength of opinion as shown in the total votes cast in a General Election with that shown by the election of

representatives in separate constituencies, that we can tell whether the arrangement of a country in constituencies has been effected in a fairly trustworthy manner. Any imputation of political design in the arrangement of the constituencies of the United Kingdom must be discarded; but the tests of experience already referred to suggest a doubt whether the existing arrangement is not somewhat lop-sided, tending now to exaggerate the victory, and now to lessen the defeat, of one party.

An ideal of representation.

Enough has been said to discredit the implicit faith put in the result of a General Election as demonstrating the will of the nation. The acceptance of a newly elected House of Commons as an absolute demonstration of national judgment is a useful, perhaps necessary formula; but there is no certainty that it is well founded, and the enquiry arises whether electoral methods are not possible, giving a greater assurance of the truth of the result. This enquiry must be deferred to a later chapter; but it may be remarked here that it would appear to be desirable to aim at the election of a House of Commons which should not only reflect the balance of the national will at the moment of its election, but should also contain within itself such a representation of the elements of national character as to give us the hope that it would continue to reflect the balance of national judgment for a working period of fair duration. It may be difficult to move forward to such an ideal; but if the House of Commons were in some measure a microcosm of the nation at the time it was elected, it would not only reflect the national judgment at that time; it would also consider the circumstances that must arise during the period of

its existence much as the nation itself considers them. It is a matter of chance how far its first service is faithfully executed. We shall see hereafter how the second purpose is fulfilled, and the enquiry will throw light on the application of the principle already mentioned, 'one man one vote, and every vote of an equal value.'

CHAPTER II

THE SANCTION OF THE AUTHORITY OF THE HOUSE OF COMMONS

Predominance of the House of Commons

THE House of Commons has been described as the prime organ of the national will. Its authority is recognised as absolute when issuing from a General Election, and it has a *prima facie* claim to predominance whilst it lasts which can only be temporarily disputed pending recourse to a new election to ascertain whether it continues to represent the national will. If it is asked on what this predominance rests, the common answer will be that it is only the expression of the right of a free nation to self-government; that the House of Commons is the voice of the nation, and to it every partial authority must yield. This may be the right answer to the question considered as a problem in political ethics; but it remains to be seen by what sanction this just authority is asserted and maintained. The clue is to be found in the exclusive rights of the House of Commons over taxation. Since the great civil war the Crown has never pretended to any right to impose a tax on the nation. Parliament, and Parliament alone, can authorise any levy of duties. The two Houses, however, have very unequal shares in this authority. The House of Commons claims — and this claim is allowed by the House of Lords — to originate all taxa-

attested and maintained through its exclusive right to originate taxation.

tion. It claims more than this. Whilst it admits the right of the House of Lords to withhold its assent to any proposal of taxation sent up to it, it refuses to the Lords any power to modify or vary such proposals, and though within the House of Lords this limitation of its power is denied, and action has been taken from time to time as if it were free to alter proposals sent up to it, no such action has been tolerated by the House of Commons since 1678; and indeed the Lords have now for a long time past abstained from sending down to the Commons any amendments dealing with the taxation of the people. Whatever claims the Lords may assert being thus confined to their own chamber, and never put to any test, may now without disrespect be regarded as an idle pretension. In the House of Commons alone proposals of taxation originate, and they must be accepted without change or rejected by the House of Lords.

Most taxation must be annually renewed.

The power thus recognised as vested exclusively in the House of Commons is further supported by the practice of imposing a large proportion of the taxation of the country for one year only. The revenue raised by taxes of a permanent character is insufficient to meet the normal cost of government, and there would be a large deficiency, were not certain annual taxes annually renewed. The income-tax, when revived in 1842 by Sir Robert Peel, was imposed for a term of three years, and then for a second period of three years, and Mr. Gladstone in 1853 settled it for seven years; but this settlement did not stand the strain of financial necessities, and ever since the year 1860 the tax has been imposed for twelve months only and constantly

renewed, often with variations of rate. The duty on the importation of tea is an example of an indirect tax which is also imposed annually. The facts that the revenue arising from such duties is annually required, that the proposals for them must originate in the House of Commons, and that the House of Lords practically confesses that it cannot alter a Tax Bill constitute a strong, but far from exclusive illustration of the predominance of the House of Commons.

Claim of Commons to abolish taxation —

Out of the chain of circumstances thus stated, a larger claim over taxation has been established even in recent years. The House of Commons has not only absolute mastery over necessary annual taxes; it has practically an absolute mastery every year over all questions of taxation, unless the House of Lords is prepared to throw the taxing machinery of the country out of gear. This extension of authority has been effected by bringing together in one Act proposals of taxation which were formerly introduced separately.

e.g. Paper Duty, 1860—

In 1860 a Bill for abolishing the then existing duties on paper was passed by the House of Commons, but when sent up to the Lords was rejected in their House. This produced some excitement, and the step was denounced on the ground that maintaining a tax against the will of the House of Commons was next door to imposing a tax; but the Lords had acted within their legislative capacity, and there was no immediate remedy. In the next Session, however, the repeal of the paper duties was effected by a clause in the annual Bill providing for the necessary reimposition of annual duties; and if the Lords had any desire to maintain their action of the preceding Session they did not venture to throw

out the general Bill submitted to them, and they could not change it. By tacking on a clause repealing a tax or a clause modifying a tax to clauses for the reimposition of absolutely necessary taxes the Commons attained complete control over the whole subject of taxation. The importance of the step thus taken may be measured by a consideration of the parliamentary situation some fifteen years earlier. Sir Robert Peel was carrying his Bill for the repeal of the Corn Laws through Parliament in 1846, and was watching with much anxiety its uncertain course in the House of Lords. He was prepared to appeal to the country against their decision had they rejected it; but it may be said with certainty that it never occurred to him to compel their acceptance of the abolition of taxes on corn by incorporating this abolition among the clauses of an annual Customs and Excise Bill. In his own mind he would probably have regarded such a proposal as unconstitutional, and his view would have been in harmony with the opinion of the day. The action of 1861 quietly effected a change now beyond question.

established by 'tacking.'

The policy of that action has indeed been carried further by both the great parties of the State. What used to be called the Customs and Inland Revenue Bill received in 1894 the name of the Finance Bill, when Sir William Harcourt embodied in it his extensive proposals on Death Duties; the Finance Bill being avowedly intended to include all the financial changes of the Session. In 1899 Sir Michael Hicks-Beach submitted to the House of Commons proposals altering the permanent provisions made for the reduction of the National Debt. Up to then, the several arrangements

Further consolidation of taxation in Finance Bill, 1894.

that had been successively proposed for the redemption of the National Debt had been incorporated in separate Bills; but Sir Michael Hicks-Beach made his proposals in clauses forming part of the Finance Bill; and though the policy of this new departure was observed upon by a member of the Opposition, it was maintained by Sir Michael Hicks-Beach with the support of Sir William Harcourt. Nothing was said in the House of Lords on this change imposing a new check on a power they might theoretically claim to exercise.

National Expenditure

The House of Commons controls the taxation of the country. It does more. It has a power which may be pronounced even more effectual in establishing its predominance. Of the money raised by taxation not a penny can be spent (apart from the sums devoted to the service of the National Debt, the Civil List of the Crown, the salaries of Judges of the High Court, and to other purposes deliberately set above the necessity of annual approval — all which payments are ordered by standing Acts of Parliament) except under special and separate votes designating the services to be executed and the sums set apart for the execution of each. It may be noted in passing, that the House of Commons protects itself against itself by requiring that no vote of money shall be considered except on the proposition of a Minister of the Crown; but this safeguard against irresponsible proposals does not touch the fundamental fact that the House of Commons gives its express sanction to each vote in turn, and then sanctions the application of the monies raised by taxation to the support of the several votes that have been passed. It is provided moreover that no money unspent, in respect of the vote to which

must be sanctioned in detail by Commons.

it has been assigned, can be transferred to augment any other vote, or to meet a new vote, except in cases of sums voted for the several departments of the Army or of the Navy, in which cases savings under one head may, with the consent of the Treasury, be applied to meet deficiencies under other heads. Moreover, the sums thus voted are voted for the financial year only, and whatever is left unspent at the end of the year lapses and is withdrawn. Lastly, a special department, the salaries of whose chiefs, like those of the Judges of the High Court, are placed above annual supervision, is charged with the duty of seeing that the monies voted are spent on the objects for which they are voted, and on nothing else, and of reporting on any divergence from this rule. All this may be summed up in the statement that the House of Commons votes annually and specifically what is required for the several services of government. It rests with the House of Commons to renew these votes every year, and without such renewal all the services of the country come, at the end of every year, to an abrupt suspension.

Concurrence of Lords necessary,

Every detail of national expenditure thus originates in, and is supervised by, the House of Commons. Without its initiation nothing can be proposed, nor can anything be spent, except as it expressly directs. It must not, however, be supposed that the House of Lords has not any right of formal sanction over expenditure. It has a power which might in case of necessity be invoked, though the attempt to use it with effect would involve consequences not easily contemplated. Whilst the House of Commons makes grants of expenditure in detail, and votes the money to provide for

these grants, its separate resolutions are gathered up in Bills from time to time during the parliamentary Session, and finally at the close of the Session are collected in an Appropriation Bill; and these Bills are, like other legislative proposals, sent to the Lords for their concurrence. The House of Lords must accept or reject each such Bill as a whole. Not a word can be altered in them. Any attempt to send back such a Bill altered in any degree to the House of Commons would be met by a refusal on the part of the latter to look at it. Yet the concurrence of the Lords is necessary before the Bill becomes an Act, and until this is done money cannot be legally issued for any of the purposes that have been proposed.

and might conceivably be withheld.

It has been said that the House of Lords might reject the annual Taxation Bill on pain of throwing all the machinery for raising money from the people out of gear. Similarly it might reject the Supply Bills, if prepared to arrest expenditure on every service, and to bring the general machinery of government to a stop. These are latent powers. If we cannot say that under no circumstances could any of them be used, we may still remember that no thought of using them has ever been entertained for centuries. The suggestion has been made in words, if not entertained as a near possibility, that the House of Commons should stop Supplies. Such a threat was heard before the great Reform Act of 1832. No one, however, can remember a suggestion that the House of Lords should refuse to assent to Supplies. The power is not dead. It cannot be called living.

The exclusive and conclusive authority of the House

of Commons over expenditure has long been practically established in the United Kingdom. This historic truth may however be qualified by the suggestion that it has not been disputed because it has not been abused, and that the reserved if dormant power of the Lords might be invoked to check abuse, were it proposed. Collisions have been prevented because there is a general understanding as to the provinces of action of each branch of the Legislature, and because a General Election is recognised as being always at hand to solve any rising difficulty before it becomes too acute. In this connection recurrence may again be made to colonial experiences, as illustrating, by their sharper trials, the safeguards enjoyed within the United Kingdom. In organising self-government within the colonies to which it has been given, a Lower House, generally called the Assembly, has been set up and invested with the rights and privileges of the House of Commons. A second House, the Council, was added, which was in a majority of cases made elective like the Assembly, though of a somewhat less popular character. There was early manifested a disposition on the part of elected Councils to claim a greater authority over money Bills than that exercised by the House of Lords, and in some cases the Council succeeded in obtaining the power of amending money Bills, or at least of sending them back to the Assembly with suggestions of amendment. In other cases the Council did not claim the power of amendment, but did exercise the power of rejecting money Bills where it was alleged that they had been abused by an incorporation in their clauses of proposals improperly included. The colony of Victoria has

Colonial cases of such action by Second Chamber.

been richest in these experiences, and it may be instructive to examine two cases in its history.

Victorian deadlock in 1869.

In 1865 the Assembly was bent on passing a protective tariff to which it was known the Council was hostile, and the Assembly inserted its tariff in the Appropriation Bill, and sent up the whole as one measure to the Council. The latter, unable to alter the Bill, laid it aside, whilst declaring its readiness to pass an Appropriation Bill, if restricted to the provision of money for the public service. The colony was thus left without the means of paying its officials, and Sir Charles Darling, the Governor, gave his sanction to the borrowing of money by the Government and the payment thereout of the sums that had been voted in the Appropriation Bill. Not only so, he sanctioned the levy of duties as proposed in the rejected tariff. These irregularities were immediately censured by the Colonial Secretary, and the censure was quickly followed up by the recall of Sir Charles Darling. Stopping here, it may be observed that the first departure from home practice lay in the tacking together of the tariff and the Appropriation Bill. If such a proposal were laid before the Crown by Ministers in the United Kingdom, the question would arise whether the Crown, after failing to induce Ministers to refrain from the proposal, should seek other Ministers who would undertake the responsibility of office without this new departure. In the course of such negotiations it would naturally be pressed that, if the legislation proposed to be incorporated in the Appropriation Bill were sent up separately and rejected, it would be possible to appeal to the country, and the verdict of the

constituencies upon the issue presented to them would be accepted as conclusive. Similar pleading would not have had the same effect in Victoria, because it was not there a constitutional understanding that the Council would defer to the result of a new election, and Sir Charles Darling urged in defence of his conduct (what subsequent trial proved to be true) that a new election would approve the policy of his Ministry, and yet the Council would not yield. It may still be urged that Sir Charles Darling should have taken more practical action in withstanding the tacking proposed by his Ministers, but he might have failed in obtaining other advisers, and it seems certain that, if he had succeeded in this step, the new Ministry could not have carried through the Legislature in a separate Bill the proposals for a protective policy, on which the Assembly and the constituencies of the Assembly insisted. The rejection of the separate tariff Bill would have been a defeat to the Assembly and the constituencies electing it, and the device of tacking would have been again pressed upon the Governor, who must then have yielded to the only course left open. His sanction of tacking as actually given was therefore no more than an anticipation of action to which, as the last resort, he must have yielded. If this view is correct, Sir Charles Darling simply jumped two stages in an inevitable conflict, and we must be slow to condemn the adoption of what was plausibly deemed the only possible way out of an *impasse*. Where there is no solution provided for a deadlock, a solution must be invented, and tacking seemed the sole, though it proved an ineffectual, means of relief. In consenting

to the borrowing of money and to payments thereout by his Ministers without full legislative authority, Sir Charles Darling more clearly departed from the constitutional path. Later experience in the same colony showed that something like an absolute arrest of the machinery of government should have been suffered as a preparation to a solution that must, in some way or other, be discovered. It will presently be seen how this was developed.

The 'Darling' grant.

Sir Charles Darling was censured and recalled, and he retired from the colonial service. The Victorian Government thereupon resolved to make to Lady Darling a grant of money which, as the wife of a private citizen, she could accept without breach of rules. In such a case the course at home would be for the Crown to send to the House of Commons a message recommending the grant, and to the House of Lords a message recommending their concurrence. Replies of compliance would have followed, and a vote would thereupon be moved in the House of Commons and embodied in an Appropriation Bill sent up to the Lords. No instance is known of the Lords having replied to the message of the Crown demurring to the proposed grant, but could such a thing happen, the Commons would doubtless proceed to pass the vote and to include it in an Appropriation Bill, leaving to the Lords the option of assenting, or of preventing all grants of supplies. Events have never proceeded to such extremities here, but the imaginary course has been traced for the sake of illustration. In Victoria a message recommending the grant was sent to the Assembly, but not, it would seem, in the first instance, to the Council. The grant

was voted by the Assembly and included in an Appropriation Bill which was rejected by the Council. Ministers resigned, but it was proved impossible to find others to accept the responsibility of office, and they were accordingly retained in power, and Parliament prorogued, and as quickly brought back, so that the grant might be renewed in a new Session. This time a special message was sent to the Council asking their concurrence, but the Appropriation Bill including the grant was again rejected by them. New Ministers were this time found to undertake to separate the grant from the ordinary Supply, but they were immediately censured by the Assembly for excluding it, and the old Ministers came back. Nearly twelve months had passed between the first submission of the grant and this return to power of the Government that proposed it, and the public service of the colony must have been reduced to great straits; but at this juncture Sir Charles Darling, after explanations given and received at home, was reinstated in the public service, and he withdrew on behalf of himself and his wife the acceptance of the grant for the latter, and the cause of controversy thus disappeared. No censure can be passed upon the Governor, his successive Ministers, or the Assembly for the conduct of this crisis. The Council too acted within its legal powers and was victorious, and censure is inapplicable here also. The real fault lay in a constitution which provided no way of escape from a deadlock; and the strain of the conflict of powers was not sufficiently prolonged and profound as to force a way where it was not provided, as it has been forced at home.

Another deadlock in 1877.

The colony of Victoria furnishes yet another episode in its history, which may perhaps prove to have a greater bearing upon constitutional development at home than those that have been noticed. The members of the Assembly receive payment for their services under a temporary Act, and in 1877 the Assembly passed a Bill to continue such payment, and to make assurance doubly sure included in the Appropriation Bill votes to meet the payment. The Council laid aside both Bills, and for some months the government of the colony was left unsupported by fresh supplies. The Governor was pressed to economise expenditure by consenting to the dismissal of public functionaries, and to this he consented even to the length of dismissing judicial officers such as County Court Judges; but, being better informed as to the limits of legality in this respect, he addressed his Ministers, and their steps were retraced, so that the dismissals extended only to those functionaries whose tenure of office permitted such an act. The Governor was further pressed to sanction payments on the votes and resolutions of the Assembly alone; but to this he remained resolutely opposed. Some attempt was made to discover an authority for the payment of essential services under the Act of the Imperial Parliament which established the colonial Constitution, and the Governor was apparently prepared to accept the advice of his Ministers on this point; but the occasion for acting upon it did not arise. After many months of extreme agitation the Council agreed to approve an Act continuing the payment of members to the end of the Parliament; and the Assembly withdrew the obnoxious votes providing for

their payment from the Appropriation Bill. Both Bills passed, and the immediate conflict ended; but the colonial Ministers introduced into the Assembly Bills to prevent the recurrence of such controversy by providing for the eventual victory of that House in case of a prolonged dispute; and, though these Bills were not proceeded with, the Prime Minister of the colony and a colleague were sent to London to induce the Imperial Government to take action if necessary through the Imperial Legislature.

Sir Michael Hicks-Beach on the situation.

They did not succeed in this mission; but Sir Michael Hicks-Beach, then Colonial Secretary, who had been not a little embarrassed in some previous stages of the contest, sent a composing despatch to the colony, recommending submission to the principles observed at home, — more especially (1) that the Assembly should 'refrain from annexing to a Bill of Aid or Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill,' (2) that the Council should 'refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill,' and (3) 'that the Council should so transact its business that the wishes of the people as clearly and repeatedly expressed should ultimately prevail'; and Sir Michael Hicks-Beach concluded the despatch with the expression of an opinion that the Imperial Parliament would not interfere, unless the Council should refuse to concur with the Assembly in some reasonable proposal for regulating the future relations of the two Houses in financial matters in accordance with the high constitutional precedent to which he had referred, 'and should persist in such refusal after the proposals

of the Assembly for that purpose, an appeal having been made to the constituencies on the subject, have been ratified by the country and again sent up by the Assembly for the consideration of the Council.'

Conclusion to be drawn.

It will be seen that the concluding observation of Sir Michael Hicks-Beach is limited to legislation in respect to finance; but this limitation naturally arose from the circumstances with which he had to deal. It cannot be admitted as indicating any existing limitation of the principle that the House of Lords must defer to the will of the nation clearly expressed at a General Election upon an issue clearly presented. The principles enunciated by Sir Michael Hicks-Beach must indeed be regarded as strictly interdependent, and they may be summed up in saying (1) that the House of Commons should never tack to a money Bill legislation foreign to it, (2) that the House of Lords should never reject a money Bill, properly framed, and (3) that the House of Lords should defer to the authoritative expression of the national will. A breach of the first principle on the one side may justify a disregard of the others on the other side, but as long as the third principle is faithfully observed, it is unnecessary to anticipate a breach of the first. Legislation need not be smuggled through the Legislature, when it can be regularly passed if willed by the nation after what must be regarded, in the life of a nation, as a moderate period. The discretion which has been developed in the past may be trusted to be maintained in the future. The House of Commons in the ordinary course exercises an unqualified authority over the amount and the destination of the expenditure of the country; and it

can in the last resort exercise the supreme power of withholding all supplies, thus bringing the government of the country to a standstill. The House of Lords may indeed refuse to concur, and the House of Commons may refuse to initiate; but these powers have rested, and may long rest, entirely unused, as weapons that may conceivably be employed, but should never be wanted.

between the claim and the denial remains unsettled. It is not at once evident how such a claim as that made by Lord Salisbury can be effectively met, as long as it is made in good faith under conditions not outraging the common judgment. If resorted to as a mere device of obstruction, to stay the progress of legislation because it was disliked, and with no real ground for thinking it might be disapproved by the constituencies, it might provoke a strength of resentment outside, that would support a Ministry possessing the confidence of the House of Commons in resorting to extreme measures to enforce its way. This is only saying that if the House of Lords abused its power on one side, an abuse of power on the other might be provoked and sustained. But if the House of Lords puts aside a project of legislation through an honest, though it may prove to be a mistaken, apprehension of popular judgment, or even under honest doubt of what that judgment may be, it cannot be condemned as acting in excess of its duty. This expression of opinion must not be taken however as prejudging any question as to the proper composition of the House of Lords, or even as excluding the consideration of the expediency of other methods of settling disputes between the two Houses in respect of questions which are not of sufficient gravity and importance to require an express reservation for national judgment.

If made in good faith, must be allowed.

There are many matters of considerable though second-rate importance which could never become the primary ground of a national appeal; and there are other subjects on which a dispassionate judge might hold that the nation had spoken in its main decision, even though this was honestly doubted by a reluctant House of Lords.

Practical failure of appeal on secondary issues.

Those who recognise the will of the nation as the ultimate force of the Constitution must admit that in cases like those thus suggested its operative power fails; and it remains an unsettled question whether it is possible to introduce such modification in practice as shall serve its due enforcement. An illustration from past, though not distant, history may make the nature of the problem somewhat plainer. The eligibility of Jews to sit in the House of Commons was for many years a subject of contest between the two branches of the Legislature. Jews had been elected in more than one instance, so that the question was one of a practical character, and the House of Commons again and again sent up Bills to the Lords to remove the disabilities of the Jews, which were as often rejected by the Upper House. From the nature of things it could scarcely happen that this dispute would be a paramount issue at any General Election; but it was of course often mentioned between candidates and voters, and the fact that successive Houses, however varying in their composition, maintained a consistent support of the Bill for removing the Jewish disabilities, showed that the will of the constituencies was in its favour. The Lords, safe in the second-rate character of the issue, persisted in their attitude, until at last they yielded to the advice of a Government of the same political complexion as their majority, and then only so far as to give each House power to admit Jews, keeping up the barrier of exclusion as regarded themselves. They have since removed this obstacle of their own accord, and Jews now sit freely in both Houses. But the example is noteworthy as illustrating the force of inertia which the Lords maintain in the parliamentary system. There are

An illustration: 'Disabilities of Jews.'

Suggested remedies.

doubtless other questions now pending which remain unsolved through the operation of a similar sluggishness; and it may become a matter worth consideration whether the advantages of slow and cautious movement in respect of subjects of first-rate importance could be secured without suffering an indiscriminate delay in the settlement of secondary issues. A gradual change in the composition of the House of Lords might do much to diminish the number of the instances in which legislation is impeded. But proposals have often been made of other methods of meeting the difficulty. Similar suggestions have been thrown out in the colonies where parliamentary institutions have been established; but even in them public opinion is slow to favour drastic changes. The subject may be again discussed. It is enough here to note that while the House of Commons expressing the judgment of the constituencies is admitted to be entitled to have its own way on questions of paramount importance, its will may be effectually and continuously checked on subordinate matters by the quiet and steady resistance of the House of Peers.

CHAPTER IV

THE GROWTH OF THE AUTHORITY OF THE HOUSE OF COMMONS

THE strength of the House of Commons lies in its authority over taxation, and it is under this influence that its relations with the Crown and the House of Lords have taken shape. In the organisation of England under Norman and Plantagenet Kings everything came from the Crown. All rights, privileges, and powers had, nominally at least, their origin in royal grants. The Church alone maintained a certain independence; but even its temporal organisation worked with, if not under, the approval of the King. It was by his summons that barons, bishops, and abbots were called to his Council; and it was under his writs that in due time knights of the shire were chosen to speak for the freeholders of counties, and burgesses were sent up from the cities and boroughs selected by him for what was then accounted as often a burden as a privilege. Traces of this great authority still survive in the fact that writs from the Crown summon members of the House of Lords to their service in Parliament, and enjoin sheriffs and mayors and other returning officers to proceed to the election of members of the House of Commons. Lords and Commons came when the King wanted them, and only when he wanted them, and on

The King summons Parliament to obtain money help.

his death any parliament then in existence was *ipso facto* dissolved. Their attendances upon him were occasional and irregular, and the purpose for which he called them together was generally, if not universally, to obtain grants of money for his service.

Lands of the Crown originally adequate for normal expenditure.

His ordinary charges were supposed to have been met by a large endowment of land in his possession, and by rents and services of the tenants, who directly or indirectly held from him every acre of the land of the country which he had not in possession. The position of the King in England may be illustrated by that of a lord of a manor who has his demesne, rents from his tenants, and fines, heriots, and services due and payable by copyholders and others on special occasions. The King had his lands and rents for annual maintenance, and he could demand additional contributions, when his eldest son was knighted, or his eldest daughter given in marriage, and upon other occasions of special need, admitting of extension or contraction, and being characterised by a vagueness, at one time useful to the Crown, and at another time to the subject. It must however be repeated that the King's estate, the endowment of the Crown, was the usual and sufficient appropriation to meet all kingly charges, not merely the expenses of the King's household and personal maintenance, but of the whole service of the Crown, judicial, military, and civil, so far at least as these were not sustained by fees received in relation to the services which the several officials performed. The Crown lands still furnish in theory the true and full endowment of the Crown. For two hundred years there has been a new transaction at the commencement of every reign, by which these lands

are handed over to the care of Parliament during the reign. Parliament undertakes to furnish an adequate sum for the maintenance of royalty, and to relieve the Crown of the charges attendant upon the Crown estates; and an examination of the successive Acts of Parliament passed to embody these transactions will show conclusively that, if the Crown resumed the Crown lands, it would resume at the same time not merely the burden of royalty as popularly understood, but also the cost of the King's Ministers, Judges, Ambassadors, and other agents. The attenuated revenues of the Crown lands to-day bear a ludicrous disproportion to the charges which the royal endowment was meant to serve; but though the lavish grants of kings early diminished their resources, and forced them to extraordinary measures to meet their wants, it is still true that even so late as the days of Elizabeth, a frugal monarch could rule without recourse to parliamentary assistance to supplement the normal revenues of the Crown.

By the time of Elizabeth Parliament was definitely constituted,

For an adequate, if not a complete comprehension of the Constitution as it is, it is scarcely necessary to go much farther back than the days of Elizabeth. By that time the Houses of Lords and Commons were well organised with separate functions. The House of Lords had been reduced in numbers during the Wars of the Roses, and the power and wealth of those who survived had been broken; but new members were called to it by the royal favour of the Tudors, being previously or simultaneously by the same favour enriched with the spoils of dissolved religious houses. The Tudor sovereigns, and Elizabeth conspicuously among them, added largely

to the number of boroughs represented in the House of Commons, with the result that at the close of her reign the representation of England at Westminster was much the same as it was down to 1832. Parliament may be said to have been formally and definitely constituted in the days of Elizabeth; yet it is to be remembered that, out of the forty-five years of her reign, there were thirty-three years without any parliamentary session, and the interval between the prorogation of one parliament and the assembling of the next extended in one instance to no less than six years. Elizabeth ruled much without Parliament, being able to do without parliamentary assistance. She was no less autocratic than her successors; but where she was frugal they were lavish, and the necessity of raising money became the means of establishing the authority of Parliament, and especially of the House of Commons. It must be added in extenuation of an extravagance that might unduly seem their fault, and was certainly their ruin, that the change in the value of money following the discovery of America added greatly to the amount required to meet the expenses of government, whilst the rents of the Crown were not easily susceptible of commensurate increase. The rebellion in the North in the later years of Elizabeth was in some measure due to the discontent of peers finding themselves strangely impoverished; and the necessities of Charles were aggravated in a similar fashion. This king had not the frugality of Elizabeth, and could not, like her, dispense with the assistance of Parliament. Had it been otherwise he might have confirmed and even strengthened an autocratic rule; but as often as he was forced to call

but often dispensed with, owing to royal frugality.

The increasing necessities of the Crown

Parliament together to ask for money aids, the deep discontent of his subjects broke forth. His attempts to levy ship-money under the royal prerogative are so far justified by precedents that the judges who decided in his favour must not be hastily condemned. But in fact a new spirit had gone forth, and the stubbornness of resistance to his exactions was a manifestation of the deeper resistance to his attempts to overrule the religious movements among his people. It is unnecessary to follow the development of the struggle between the Parliament and the King. The majority of the House of Commons absolutely refused to bend to his will. The arrest of individual members, and the attempt to overawe the assembly by entering it in person, were alike unavailing. When at length he gathered his followers together to establish his rule by force, Parliament organised an adverse army, and the conflict ended in his ruin.

make it dependent upon Parliament.

Before the civil war actually broke out, much had indeed been done in the way of formal recognition of the rights of Parliament. The Petition of Right of 1628 protected the liberty of the subject by declaring that no man could be lawfully detained in custody except upon a warrant showing a definite accusation, and the same declaratory statute condemned as illegal every tax not sanctioned by Parliament. This last declaration was not understood to cover Customs duties, the right to levy these without authority of Parliament remaining undetermined; but the two provisions if faithfully preserved would have gone far to destroy the arbitrary power of the Crown. The King was however able, after assenting to the Petition of Right, to rule for nearly

Provisions of Petition of Right

twelve years without convoking Parliament; and its provisions remained to be interpreted by a judiciary dependent upon him without fear of parliamentary action. The Long Parliament began its career by establishing the illegality of customs duties unless authorised by Parliament, by providing that no Parliament could be dissolved within fifty days of its meeting, and by enacting that every Parliament must be dissolved at the end of three years and a new Parliament immediately summoned. To secure this last object electors were required to meet together of themselves and choose members if the King delayed issuing his writs and other authorities failed to take the necessary steps for holding elections. The abolition of the Star Chamber, which had exercised a criminal jurisdiction without the protection of a jury, was yet another step accomplished by this Parliament in defence of the liberty of the subject. The limitation of Parliament to three years was quite disregarded by the Long Parliament itself and repealed on the Restoration, but the other great legislative guarantees of security against the Crown were maintained, though liable to perversion through the suppleness of judges still dependent on the royal pleasure. The abolition of feudal tenures and incidental duties under the Commonwealth proved moreover to be a step that could not be reversed, and thus added to the dependence of the Crown upon Parliament. It may be broadly said that since 1660 no Sovereign has ever dreamed of, no Minister has ever ventured to counsel, the levying of a tax or duty except under the authority of an Act of Parliament.

and of Long Parliament against arbitrary taxation.

What remained wanting was a more unequivocal

prescription to judges of their duties, a provision for their absolute independence in discharge of them, and a complete nullification of any royal pretence to suspend or dispense with the execution of any law. These additional safeguards were provided within a generation. The Habeas Corpus Act of Charles II. contains the most stringent regulations to enable any prisoner to be brought peremptorily before any judge of the superior courts, and to be discharged from custody unless held in arrest under some specific and sufficient reason duly assigned, in which case he must be brought up for trial at the next gaol-delivery.

Habeas Corpus Act (1679).

The edifice was crowned by the Declaration of Rights on the flight of James the Second. That great act of State really made the Crown a creature of Parliament instead of Parliament being the creature of the Crown. In the Declaration of Rights, Parliament, after having dismissed an inconvenient Sovereign, was addressing others of its own acceptance, and the Bill of Rights which followed was a formal recognition of a fact irresistibly established.[1] It condemned for ever the power of the Crown to suspend laws, and passed a similar judgment on the abuses practised by the judiciary in the administration of laws.

Declaration of Rights (1689).

Twelve years however yet passed before an Act provided that judges should hold office during good behaviour with suitable salaries, and should be removable by the Crown upon the address of both Houses of Parliament.

Independence of Judges established (1701).

[1] By a strange inconsistency the principle that Parliament is dissolved immediately on the demise of the Crown was left undisturbed; but six years later an Act was passed providing that Parliament should determine six months after the demise of the Crown. (See page 96.)

Supremacy of Parliament now unquestioned.

William the Third had not indeed immediately acquiesced in a system of parliamentary government as now established. He did not at once accept a homogeneous Ministry associated together by common opinions; and whilst doing nothing contrary to the will of Parliament, he attempted to make his own office in some degree an independent factor in the determination of that will. This period soon passed, and thenceforward it may be said no wearer of the Crown has ever tried to exert a power except through the recognised channels of parliamentary action. Kings may have spent money in getting their candidates chosen at elections; they may have bribed members by pensions and places; and may have used their personal influence in affecting the votes of peers. But what Peers and Commons have agreed upon, they have accepted, and they have not tried to maintain Ministers in office unsupported by the House of Commons, except when it was doubted whether the House of Commons reflected the minds of the constituencies, and this doubt was to be presently put to the test of a General Election.

Influence of Lords on Commons

The two Houses of Parliament had thus established their authority against the Crown; but more than a century passed before the House of Commons, as the organ of national judgment, effectively established its authority against the House of Peers. It was not only provided by law that no tax of any kind could be levied except by the authority of Parliament; it was recognised as beyond dispute that all grants of money must originate in the House of Commons. But the discretion of the Lords in dealing with money Bills was not so clearly understood; and the House of Commons

had become and remained down to 1832 an Assembly, a large proportion of whose members were in truth nominated by members of the Upper House. In this way even a formal recognition of the privileges of the House of Commons did not in fact amount to an installation of the supremacy of the popular will. Behind a large number of the members of the House of Commons were the peers to whose favour they owed their seats; and if the nation could then be described as self-governed, the nation must be understood as consisting of the peers and other wealthy proprietors of pocket boroughs, of the landowners who controlled county elections, and of the 'free and independent electors' who were privileged to vote in the open boroughs. Occasions however did arise between 1688 and 1832 when the Lords and Commons were found divided against one another, though for the greater part of this period the forces controlling the two Houses were so far substantially the same that serious and fundamental contests were impossible. Thus the Commons early attempted an abuse of their exclusive power over money Bills by tacking on to them legislation obnoxious to the Lords; but in 1702 the Lords protested against this practice as fatal to their rights, and it was tacitly abandoned. Within a little more than a dozen years a precedent of the highest gravity was however created, which after long lying dormant was invoked again in 1832 with such effect that the suggestion of it procured the passing of the Reform Bill. The Tory Ministers under whose influence the Treaty of Utrecht had been negotiated had not a majority in the Lords, and the Queen assented to a creation of peers so as to turn the balance in favour

due to ownership of rotten boroughs

illustrated by their rejection of Fox's India Bill.

of the treaty. A step so violent could only be justified by necessity, and necessity could only arise when the elements composing the two Houses were in strong hostility to one another. The practical intercommunion between the two chambers grew during the eighteenth century as the proprietary control of boroughs increased, and as the representation of counties tended to become a struggle between great landowners or combinations of landowners. Contests involving the distinct principles of origin of the two Houses thus became rarer and rarer. The struggle over Mr. Fox's India Bill, though somewhat confused in its history, affords a most striking illustration of the relative position of the branches of the legislature in 1783. The Bill had been supported in all its stages in the House of Commons by considerable majorities; but it had been bitterly attacked outside that Assembly, and had provoked a widespread agitation in the country. The defence of the privileges of the East India proprietors was covered and assisted by a jealousy of aggravated bureaucratic power and zeal for the rights of the Crown. Could a similar situation have arisen today the Lords would, on their own motion, have thrown out the Bill, and Ministers without suffering its rejection to affect their tenure of office would in due time have gone to the country. The only other conceivable course (and this cannot be suggested as beyond constitutional criticism) would be for the Crown to assume the responsibility of dismissing its Ministers and of summoning other advisers on the ground that the first no longer possessed the confidence of the electorate. George III. did not, even in 1783, venture on this stroke, but he allowed Lord Temple to show a paper to wavering peers intimat-

ing that he would regard as his enemies those who voted for the Bill. The Peers so stimulated rejected it, and George III. was thereupon emboldened to dismiss his Ministers. He thus affected to treat a hostile vote of the House of Lords as equal in constitutional weight to a hostile vote of the House of Commons, and even more than equal; since for some months the Commons repeatedly addressed him, in firm though dutiful language, protesting against the action that had been taken. The votes of censure of the House of Commons upon the new Ministry were disregarded, while the vote of the Lords rejecting the measure of a former Ministry had been followed by their dismissal. Mr. Pitt, who had been called to the head of affairs, endured these votes of censure during the spring of 1784; but the General Election which followed in the early summer resulted in an extraordinary change of seats. Mr. Pitt's triumph was complete, and the King's action was vindicated by the end, though not in its means.

Significance of this crisis.

The main interest of this retrospect may indeed be said to consist in two facts: first, that George III. concealed himself behind the apparently independent votes of Peers; and next, that despite the increase of pocket boroughs there remained a large proportion of seats amenable to influences really political in their character, though excited and inflamed by confused passion. What came out at the end was perhaps a vague impression of national sovereignty. The King and the Lords had played their respective parts, but all would have been in vain if the constituencies, such as they were, had not supported them at the General Election.

The unity of feeling between the two Houses, tempo-

Struggle for Reform, 1830–32,

rarily interfered with by the episode of Mr. Fox's Bill, was soon re-established; and it was not till fifty years later, after the great experience of the Napoleonic War had passed away, and the return of peace had been followed by fresh developments of domestic energy, that the real struggle arose which resulted in the permanent submission of the Peers, in the presence of a regenerated representation of national opinion in the House of Commons. On this occasion the royal will had not become insignificant, and such as it was, it was exerted, at least in the initial stages of the controversy, against the House of Lords. But the real struggle was between a House of Commons, twice strengthened by a General Election, and supported by a most threatening unorganised force outside, against a stubborn majority of possessors of privileges in the House of Lords. The successive phases of the struggle need not be recalled. The possibility of violence was always in the background, though the memory of it has so far passed away that the record now seems incredible. The followers of precedent were ready to repeat the stroke which made the Lords consent to the Treaty of Utrecht by creating new peerages or calling up the eldest sons of the lords favourable to Reform so as to turn the majority.

ends by establishing the supremacy of the Commons.

In the end the more cautious leaders of the Tory peers advised their followers to retire from the conflict, and the change was consummated which definitely put the Upper House in the position it now occupies. The existing scope and limitations of its powers are explained elsewhere. It is enough here to recall the modest contention of its leading members that the House of Lords serves as an instrument to secure harmony of will be-

tween the House of Commons and the constituencies by interposing to arrest the action of the former upon questions in respect of which the latter has made no declaration.

CHAPTER V

CONSTITUTION OF THE HOUSE OF COMMONS DOWN TO THE UNION WITH SCOTLAND

Knights of the Shire.

WHEN the House of Commons first began to assume a definite and recognisable shape it was composed of persons sent up to speak for the counties called knights of the shire, and of others deputed as burgesses to speak for certain selected boroughs of the kingdom. Between these two classes there long remained a sharp distinction as to conditions and circumstances of their election, although for many centuries there has been no discrimination between them as respects their rights as members after they have taken their seats. There still remains some difference in the suffrages by which the two classes are chosen; but, as will be seen, this difference has in late years been much diminished. Originally members, whether for county or borough, were always elected in pairs, for the purpose, Mr. Disraeli once suggested, of protecting one another on the way. It was more probably thought that the two would, between them, speak more fully and faithfully for their neighbours. The king's writ was issued to the sheriff in each county, directing him to hold a court for the election of two knights. It is difficult, perhaps impossible, to determine with accuracy who were entitled to attend

these courts. Probably at first the chief tenants came alone, others who might be qualified escaping the duty; but we may take our stand as a point of departure on a statute of Henry VI., which, after reciting that elections had been of late made by excessive numbers of people 'of which the most part was people of no substance and of no value,' provided that no one should vote who was not a resident[1] in the county and possessed of a freehold therein of the value of forty shillings. The qualification thus prescribed was at the time (1430) a high limit, and it remained through all alterations of value the sole qualification for county electors for four centuries. The same statute empowered the sheriff to put a claimant to his oath as to his qualification to vote.

Borough members.

The king's writs were always sent to the sheriffs of counties to proceed to election of knights; but in the earlier centuries there was much irregularity in summoning the representatives of boroughs. The most important cities and boroughs were probably never overlooked, but with respect to others writs were sometimes sent and sometimes omitted. Parliaments were generally summoned for the purpose of obtaining grants of money, and the possibility of refusing the king's demand was scarcely entertained, whilst the cost of complying with it was fully realised. In the centuries now under review both knights and burgesses received wages from their constituents to enable them to defray the expense of attending the king, and petitions were frequently addressed to the Crown by the poorer boroughs to be relieved from the duty

[1] The qualification of residence was abolished 14 Geo. III. c. 68.

and the burden of returning members. It depended entirely upon the will of the Crown to determine the places to which writs should be sent, and although the principle that the king cannot derogate from his own grant might be held to fix the right of a borough to representation when once a charter had been given conferring the privilege, this principle was of little validity at a time when charters themselves were of doubtful permanence unless confirmed by successive monarchs. With the settlement of the Tudor family in the possession of the Crown under Henry VII. the rights of the boroughs returning members to his parliaments became definite and permanent. A writ of return was never subsequently discontinued; but the successive Tudor sovereigns very freely exercised the power of calling new boroughs into existence. As the House of Commons became a more important part in national organisation these sovereigns sought to strengthen their influence within it by the addition of members whose loyalty might be regarded as trustworthy, and they accordingly multiplied boroughs in those districts where the Crown was thought to have special influence through the management of its landed property or otherwise. Elizabeth in particular added some sixty members to the House of Commons, of which six in the Isle of Wight and twelve in Cornwall[1] were doubtless due to Crown possessions in those parts.

Creation of new boroughs by the Tudors.

An important addition to the numbers of the House of Commons, but of an entirely different character, was effected under Henry VIII. in 1536, when Wales and

[1] Elizabeth was not the first of her family in this work. The Tudors raised borough members for Cornwall from twelve to forty-two.

the march-county of Monmouth were incorporated with England, receiving twenty-seven members, two for the shire and one for the borough of Monmouth, and one member from each of the twelve Welsh shires together with one from each of the county towns, these being the first and up to 1832 the only cases of constituencies returning one member.[1] This was followed in a few years by the summoning of members from the march-county of Chester.

Addition of members for Wales, Monmouth, and Chester.

Other circumstances remain to be added which had a more important influence in later centuries, but which must have always had some effect on the character of parliamentary representation. The writs were carried by the king's messengers to sheriffs and mayors; but the rules governing the election procedure were nowhere precisely formulated, and were largely determined by usage. The elections for each county were held at one and the same place, to which all who wished to vote had to come. There was neither in county nor borough any formal list of voters to which reference could be made; and returning officers had to use their discretion in admitting votes (sheriffs as we have seen being empowered to put claimants to the test of an oath), a discretion which might be reviewed by the House of Commons in determining the validity of the return, and perhaps by a court of law.[2] All this involved much uncertainty and confusion in the conduct of elections, and allowed scope for partiality on the part of returning officers, though as far as sher-

Management of elections imperfect,

[1] There was one exception. Bewdley was summoned by James I. to return one member.

[2] See *post*, chap. x.

iffs were concerned there never seems to have been much room for suspicion. Yet another circumstance added great expense to other evils. A county election might be continued from day to day as long as voters came to the poll for as many as eleven days, and this extension of the time of voting applied to cities which were counties of themselves, whilst even in boroughs the elections were not always finished in one day. The franchises in boroughs were of the most varying character, and in those instances where the right of voting was given to freemen, whose numbers admitted of extension, the ingenuity of election managers was exercised in after centuries to manufacture voters as elections were in progress. This stage cannot be said to have been developed before the close of the sixteenth century; but even in the later days of Elizabeth the complicated difficulties of elections had a considerable influence on the status and character of men chosen to serve in Parliament.

and very costly.

Religious disabilities introduced

The difficulties just noticed may be described as arising from defects in the machinery of elections. A cause of a very different kind became operative in the sixteenth century on the character of the House of Commons. The separation of the Anglican Church from Rome was followed in 1562 by an Act imposing an Oath of Supremacy upon members of the House of Commons, which Elizabeth did not care to have extended to the Lords, feeling probably there was more danger in any alienation of the sympathies of her few Catholic peers than could be apprehended from their legislative action. Roman Catholics were thus disabled from entering the House of Commons, and

the disability became so fixed that it survived Scotch and Irish Unions, and it was not until the year 1829 that it was removed. James I. made a few additions to the number of the House of Commons; the most remarkable involving a new departure when he conferred on the Universities of Oxford and Cambridge the privilege of returning two members apiece. This cannot be said to have greatly affected the character of the assembly; but it is noteworthy as the introduction of the principle of the representation of persons associated together by circumstances of education rather than of common residence. This process of adding other members to the English House of Commons was not closed till 1681, when Charles II. gave the privilege of representation to Newark, a step preceded in 1674 by the representation of the county palatine of Durham in the parliamentary system; but the Stuarts may be said to have found the constitution of Parliament permanently settled. The great struggles of the seventeenth century were waged by men elected for constituencies as left by Elizabeth and subject to the laws and usages established before her death. The knights of the shire had come to be chosen by the owners of real property in the several counties. They contributed a most independent and most representative element of the House of Commons. The old practice of receiving wages had died out though not legally abolished, and the charges attendant upon parliamentary service restricted the choice of knights to men of substance and standing; but there was as yet little or no suggestion of bribery and corruption and the consequent power of mere wealth to win a victory. These

representation of Universities.

Parliamentary representation under the Stuarts.

as allowable and legitimate, but by the direct purchase of the votes of electors. These last causes of demoralisation went on increasing in the next century; but the revolution of 1688 was followed by a nullification of the proceedings by *quo warranto*, and the restoration of the old charters. If the use of money in elections was little affected by this change, the power of the Crown to influence elections was thenceforward limited to the use of money. It came into the market as a purchaser of seats. References to this development may however be left to be dealt with in connection with the next century.

Triennial Act.

Before the seventeenth century closed another attempt was made to settle the long-standing difficulty of the duration of Parliaments, and the Union of England and Scotland under one legislature was consummated. In 1694 William III. assented to a Bill providing that Parliaments should expire three years after their election, but no provision was made respecting annual sessions, as this was now secured through financial necessity. The steps leading up to the Union of the Parliaments of England and Scotland will be found touched upon in connection with the parliamentary history of Scotland. The advantages of free trade between the two kingdoms established under the Commonwealth had been appreciated on both sides of the Tweed; but jealousies and apprehensions on the part of Scots and English had prevented the re-establishment of a common Parliament till under Anne the English administration became alarmed at the possibility of Scotland breaking away, and consented to terms which had up to then been resisted. The final treaty embodied

Union with Scotland.

in the Act of Union maintained intact the English House of Peers and the English House of Commons as parts of the new Parliament while joining to them respectively sixteen elected Peers of Scotland and forty-five Scottish representatives of counties and burghs.

CHAPTER VI

SCOTS CONSTITUTION DOWN TO 1707

Causes of the feebleness of Scots Parliaments.

DURING the period when the Norman and Plantagenet kings were approximately establishing the unity of law and of administration in England, Scotland presented the spectacle of an imperfect regal authority and of divided and even hostile jurisdictions. The Highlands and the Lowlands were almost two nations, and such unity as existed in the latter was largely due to the influence of a common resistance to English pretensions. Even in the Lowlands great feudatories claimed and exercised exclusive jurisdiction within their possessions, making them almost independent of any higher authority; whilst in the North the chiefs of the great clans were petty kinglets yielding obedience to the Crown only on the irregular occasions when the king showed himself backed by a force sufficient to compel obedience. The prelates of the Church were equally disposed to assert a practical independence of royal power; and municipal life was feeble and timid, choosing obscurity rather than self-assertion. It necessarily followed that when, after the example of England, a species of Parliament was brought into existence, it was bound to be imperfect, because of the absence of elements favourable to its formation.

The kings of Scotland had summoned to their councils the bishops of the Church, the thanes or earls of counties, and the greater tenants of the Crown, and these remained the chief constituent parts of later parliaments. The bodies thus called together were moreover rather judicial than legislative assemblies. Their chief work was to compose quarrels that had arisen in different parts of the country; and such laws as they made obtained an observance which was rarely general and still more rarely permanent. Scots Parliaments remained indeed very feeble institutions; and so far from there being a general desire to develop parliamentary power, efforts were from time to time made to escape the burden of parliamentary service.

The permanent endowment of the Crown remained sufficient for its wants, even after lavish grants to religious uses, and the granting of aids did not occupy that prominent part in the work of Parliament in Scotland which it filled at the corresponding time in England. Whilst pecuniary interests were thus of secondary importance, law-making was regarded as an onerous duty, and the principle of representation was at first introduced as a relief from direct service. The tenants of the Crown, not of the first rank, were suffered to appear by deputy instead of in person; and in this way county representation may be said to have originated. When the royal burghs were summoned to send spokesmen, they did their best to diminish their influence by clubbing together here and there to choose the same deputy. When it is added that bishops, earls, and barons sat together in the same House with the representatives of tenants and of burghs, it may be

concluded how little power was really exercisable by the latter. A still more fatal illustration of the weakness of Scots Parliaments appeared towards the end of the fourteenth century, in the shape of a committee which came afterwards to be called the Lords of Articles. This committee consisted of representatives of each of the three Estates, the Bishops, Lords, and Commons chosen at the commencement of Parliament, to which was entrusted the elaboration of the several Acts which Parliament as a body met together to sanction at the close of the session. At first it would appear to have been intended that this committee should simply work out the instructions given to it on its nomination, and that the final sanction of Parliament should be discriminating and real; but in practice the indication of subjects of legislation seems to have often if not generally disappeared, so that the Lords of the Articles determined in their own discretion what should be done, and the final ratification was very loosely secured. The complete degradation of Parliament was realised when we find that, instead of each Estate choosing its own representatives among the Lords of Articles, the Lords Spiritual chose the temporal members and the Lords Temporal chose the spiritual; so that the clergy found it easy to exercise a ruling influence in the committee. This mode of selecting these Lords was in full operation in 1561, and so remained down to the union of the two Crowns.

The Lords of Articles acquire the main authority.

Before that time however the greater part of the nation had gone through that tremendous upsetting of religious belief which characterised the Scottish Reformation, and the new birth of faith which domi-

The General Assembly becomes the popular representative body.

nated the struggles of the whole of the next century had been completed. A manifestation of new life appeared in the establishment of the General Assembly in 1560. It consisted of the ministers of the parishes of Scotland and of delegated laymen representing the mass of the people; and it seems to have often happened that the latter far exceeded in number the ministers who were gathered together. The legal origin of the General Assembly may be obscure, and its relation to the Crown ill-defined, but it possessed a moral sanction to which Parliament could lay no equal claim; and when James succeeded to the exercise of power after his minority his efforts were directed to the bringing of this new force into relation with, if not into dependence upon, the older Parliament.

James VI. tries to make it dependent on Parliament by the institution of Bishops.

One way of doing this was to confer upon the ministers whom he favoured the old titles of bishops and abbots, without however any addition of spiritual function; and Parliament gave him in 1597 the power of making such nominations, involving as a consequence the admission of these titular prelates to Parliament itself. At the time of the Union of the two Crowns Scotland had thus become possessed of two bodies of rival authority:—the General Assembly, which though ecclesiastical in conception often strayed into the domain of political action, and Parliament, consisting of such Bishops as have been described, the Lords Temporal, and the elected representatives of the king's tenants in the counties and of the burghs.

The accession of James to the English crown naturally made him much more independent of his Scotch subjects, whose pecuniary assistance was always insig-

nificant, and residence in the South strengthened or perhaps developed his disposition to restore episcopacy. It is needless to go through the tortuous Acts by which he sought to accomplish this end. By successive prorogations he did what he could to deprive the Assembly of its right to meet at least once a year; and he more insidiously undermined the strength of the Presbyterian organisation by providing, with the consent of a conference of a certain number of ministers of his own nomination, that the moderators of their several gatherings should be permanent officers chosen by himself, his bishops being *ex officio* moderators in the Synods to which they were attached. By means like these, and by the persecution and banishment of obstinate ministers, he got an Assembly to assent to five Articles of ritual at Perth in 1617 (ratified by his Parliament in 1621), and thus prepared the way for the complete establishment by Charles of an episcopate and liturgies on the Anglican model. Charles began his reign with an Act for the resumption of church lands; but after two years of agitation this was transformed into a salutary arrangement, under which the grosser evils of levying teinds (tithes) in kind were abated, and the stipends of ministers improved, and it seems possible that this last change facilitated the subsequent development of his policy. In 1633 a Scots Parliament was summoned, and in the choice of the Lords of Articles a further innovation was effected. The bishops as before chose eight peers, and the lords chose eight bishops; but the sixteen thus selected now took upon themselves to choose eight representatives of the lesser tenants and eight representatives of the burghs.

Charles I. further limits the freedom of Parliament

Very little independence was left in thirty-two so chosen, and when eight Crown officials were added and the whole body sat under the presidency of the Chancellor, the Lords of the Articles might be trusted to do whatever Charles desired. In fact they drew up an Act empowering the king to regulate the vestments of ministers of religion; and this with other Acts quite dissimilar from it in character were submitted to Parliament to be voted upon *en bloc*, the king attending in person to overrule objections to this method of procedure and to note the names of those who voted against his wishes. The ratification was in this way pushed through, and the reorganisation of the Scottish Church on the Anglican model effected. The events of the years of struggle that followed need not be described. Charles paid for the restoration of episcopacy with his crown and his life, though the Scots themselves were unwilling to enforce the last penalty. For a brief period under the Protector Scotland and Ireland were joined with England in a United Commonwealth. Freedom of trade, and as far as possible identity of institutions, were established throughout North and South Britain, and Scotland was represented in the United Parliament.

and completes the restoration of episcopacy.

United Parliament under Cromwell.

With the Restoration all things were put again into the position they had reached in the earlier years of Charles I. The separate parliamentary organisation of Scotland, such as it was, came again into being, and the Episcopal Church was re-established. In the reigns of Charles II. and his brother infamous laws were still more infamously administered, so that it is now a wonder that rebellion was not frequent and even

Degradation of Parliament under Charles II.

chronic. Yet it appears that the attempt at a revolution would have been delayed, had not England led the way. The situation was not indeed regarded as wholly secure by the Stuarts and their Ministers, and the memory of one of the great advantages of Cromwell's system was invoked with a design of strengthening the position of the Episcopal Church, if not of adding to the power of the Crown. The benefits of free trade established by Cromwell were well remembered, and it was seen that with the increasing importance of the colonies an equal participation with England in their development would still more largely promote Scots prosperity. Proposals of legislative union were twice entertained and twice abandoned under Charles II.; but on each occasion it was the fundamental part of the project to maintain the Episcopal Church so that it might be buttressed by the whole force of England. It was fortunate that these plans proved abortive, that iniquitous laws and prostituted justice continued unchecked or even aggravated until the flight of James from London. When William and Mary were accepted in England, the re-settlement of Scotland was among the first cares of the new king. He caused a Scots Parliament to be summoned, in the returns to which the attainders of Peers and the tests imposed upon parliamentary electors were alike disregarded, although at the same time bishops attended and took their seats in it. The assembly thus convoked took even a stronger stand than the Convention in the South. It declared the crown forfeited by James, and decreed the abolition of prelacy, and invited William and Mary to the throne as a matter of bargain

The Revolution in Scotland.

and settlement. All or nearly all the violations of law of the late *régime* were condemned; and, upon the basis of a Declaration containing all the resolutions of this Convention Parliament, William and Mary were invited to accept and did accept the crown. It is unnecessary to review in detail the later history of the Scots Parliament. The re-establishment of the Presbyterian Church was in due time formally completed, but William tried in vain to accomplish a legislative Union of the two kingdoms. Some little time was still necessary before the economic advantage of this Union and the possibility of effecting it under conditions affording a sufficient guarantee for the maintenance of the peculiar institutions of the two kingdoms, especially of their Churches, could be fully recognised. It is probable that it would not at last have been agreed upon, had not the English Parliament consented to suffer that equal participation of Scotland in colonial trade which it erroneously thought would be injurious to English interests rather than face the apparent determination of the Scots Parliament to insist upon a different limitation of the descent of the crown from that which the English Parliament had passed — a course involving the danger of the separation of the two kingdoms. The terms of Union provided for the presence of sixteen Scotch representative peers in the House of Lords and of forty-five Scots members in the House of Commons, and left untouched the franchises under which these members should be elected. They remained unaltered till the Act of 1832 recast the electoral machinery of the United Kingdom.

Union with English Parliament.

CHAPTER VII

THE HOUSE OF COMMONS, 1707–1801

The Septennial Act, 1716.

AMONG the early changes, though not the earliest, affecting the Parliament of Great Britain was one, the constitutional propriety of which has been much debated. It has been noticed that William III. assented to a Triennial Bill. The first parliament of George I. had scarce begun to sit before it was apprehended that a new election might return a House of Commons unfriendly not only to the Ministry but to the Hanoverian succession; and an Act was passed extending the duration of parliaments to seven years. This step could not be justified now when the principle of popular sovereignty is firmly established; and it must be defended as the necessity of a situation that might otherwise have developed into a revolution. It must be remembered also that the electorate and the disposition of electoral privileges were wholly different in 1716 from what they are now; and a General Election could scarcely have been described as an appeal to the people without a perversion of language. The greatest danger in the Act lay in the possibility of further legislation tending to restore the old abuses of unlimited parliaments; but it has in fact remained unchanged ever since it was passed.

Preceding the Septennial Act a Bill was passed which must be taken with several others as indicating continued efforts to increase the independence of the House of Commons. The privilege of members of freedom from arrest cannot be said to have made the House a sanctuary for debtors; but when coupled with parliaments of indefinite duration, the possession of a seat was a relief to the embarrassed. Many needy men were recognised among members, and it was to prevent their entrance that an Act was passed in 1710 that county members must have landed property worth £600 a year, and borough members similar property to the extent of £300 a year. A uniform qualification of £300 a year was subsequently enacted; but the law was habitually evaded, and was finally repealed in 1858. More effective legislation was that directed against the presence of placemen and pensioners in the House of Commons, which has been reserved for notice here though it first assumed a permanent shape in 1705. Under it, no person holding any office under the Crown created after that date can hold a seat unless expressly authorised by the Act creating the office; and any person holding any earlier office must vacate his seat on appointment to it, although eligible for re-election. The same legislation provides that no person can sit in the House of Commons holding a pension at the pleasure of the Crown, a disqualification subsequently extended to pensions for terms of years. The Act of Anne, thus referred to, remains the governing statute on the eligibility of office-holders; but a large number of the pre-existing offices have since been abolished altogether or have had the condition of disqualification

Property qualification for Members.

Exclusion of Placemen and Pensioners

attached to them. Efforts were constantly made during the eighteenth century to reduce the influence of the Crown in the House of Commons, by the abolition of offices, especially those attached to the Royal Household.

and of Government Contractors.

Akin to the legislation against placemen was that for the exclusion of Government contractors from the House of Commons. The presence of persons of this class enjoying pecuniary advantages through the favours of Ministers became a considerable scandal in the wars of the eighteenth century; and reached such a pitch during the American War of Independence that an Act was passed in 1782 disqualifying contractors. This however did not extend to subscribers to public loans who had also enjoyed considerable benefits as favoured allottees; but this source of corrupt influence was destroyed by the development under Pitt of the system of negotiating loans by sealed and secret tenders to the best bidder through the agency of the Bank of England. Disqualification under the statute is however limited to persons contracting for themselves or as partners in private partnerships, and does not extend to shareholders of public companies consisting of ten or more persons even though the shareholder may as chairman or director be directly concerned in the management of the company. In the present organisation of business it would be found impossible to exclude dormant shareholders in such companies from Parliament; and whilst legislation could doubtless be directed against managing directors, adequate security against corrupt influences is probably realised through the publicity of modern contracts and the active competition to which they are subject. The question is more complicated

where a shareholder in a contracting company is not only a member of the House, but a Minister of the Crown; but this contingency does not seem to have been discussed in Parliament, and has certainly not been made the subject of legislation.

Abortive projects of Reform.

Apart from the purification of the House of Commons from pensioners, placemen, and contractors, its composition remained practically unchanged during the eighteenth century. Under George III. steps were continually taken to augment the influence of the Crown in the House of Commons by the purchase of seats from borough-owners at successive General Elections. The private correspondence of the King with Mr. Robinson, the Secretary of the Treasury under Lord North, contains numerous illustrations of the personal interest of his majesty in the prices paid to the noble patrons of boroughs for the return of members devoted to the King's party. The secret employment of the public revenue for these purposes was not indeed maintained in later years; but the sale of seats to private purchasers long survived all attempts at reform. Lord Chatham had proposed an increase in the county representation so as to strengthen its independent elements, and the irresponsible suggestions of the Duke of Richmond and Wilkes had been followed by the careful plans of Mr. Pitt, which included the purchase and disfranchisement of corrupt boroughs at a cost exceeding a million. But all these projects proved abortive. The great war with France threw schemes of parliamentary reform entirely in the background, and the century ended with the maintenance of a system under which seven-tenths of the seats in

England and Wales were in private ownership; whilst the representation of Scotland did not, even in regard to counties, afford a parallel to the moderate independence which in this respect prevailed in England. It will be seen that in the Union with Ireland some reduction was made in its corrupt and decayed borough representation; but nothing similar was attempted as a preparation for the entrance of Great Britain into the Union.

CHAPTER VIII

THE GOVERNMENT AND PARLIAMENT OF IRELAND DOWN TO THE UNION

SCOTLAND came into connection with England through the succession of its king to the English crown, and it retained its own institutions, including an imperfect Parliament. The relations between the two kingdoms became confused under the Stuarts, but the complete separateness and independence of Scotland were fully confirmed at the Revolution. The story of Ireland is that of a conquered country. For a long time imperfectly subdued and unorganised, it remained down to a comparatively recent time (1782) in something like the position of a Crown colony. Within the area actually settled, or to use the appropriate phrase within the Pale, the leading institutions and Common Law of England were introduced, and a Parliament after the English model began to be developed. But in 1495 an Act was passed in a parliament at Drogheda, under the influence of the then Governor or Lord Deputy Poyning, which kept Ireland in subordination for nearly three centuries. Along with many useful provisions for the repression of lawlessness and the maintenance of order and justice were two others

Irish Parliament subordinated by Poyning's Law to the English.

conspicuous for the prominence of their influence. The first declared that all laws passed in England up to that time were in force in Ireland, whilst the second provided that no Bill should be introduced to the Irish Parliament which had not previously been submitted by the Lord Deputy to the King and approved by his English Council. Money grants were excepted from this last provision, but subject to this limitation it remained in force till it was repealed in 1782. Barely half of Ireland was organised when Poyning's Law was passed, but as county after county was formed and the area of parliamentary representation extended, its chain was only lengthened. Nor was this the only constitutional fetter by which Ireland was bound. When the Reformation came Catholic recusants were soon disabled from holding judicial and the higher administrative offices; but they appear to have been freely admitted to Parliament till 1641, when in the crisis of the Irish rebellion they were excluded from the House of Commons by a resolution of a majority of its members. An English statute of William and Mary enforced this exclusion, and under Anne, Catholics were practically debarred from voting as well as from sitting in Parliament.[1] The Legislature would thus at its best represent but a small fraction of the inhabitants of Ireland; and it must be added that the device to which the Tudors resorted in England of granting privileges of representation to petty boroughs likely to be loyal had been still further developed in Ireland; and was in fact freely employed up to the end of the

Catholics disabled.

Rotten boroughs.

[1] This exclusion from voting was formally enacted by an Irish statute of 1727.

seventeenth century. The degradation of the Irish Parliament was further proclaimed by a statute passed by the Parliament of Great Britain in the sixth year of George I., which of its own authority went beyond Poyning's Law and declared that the British Parliament had full power to make laws binding the people and kingdom of Ireland.

Further subordination of Irish Parliament.

Little or no light can be thrown upon the constitution of to-day by a review of the dismal tale of repression and rebellion, of treachery and force, which characterised the history of Ireland during the seventeenth century. It is enough if we realise something of the situation as it stood in the middle of the eighteenth century. The mass of the population was then, as always, devoted to the Catholic faith, the north-eastern corner excepted, which was occupied by Protestant descendants of colonists, mainly from Scotland. English elements were found along the eastern coast, and here and there in the south were families or groups of families descended from refugees from the Palatinate and elsewhere who had been planted in Ireland. But all these together could not perceptibly modify the character of the people. If the religion of the overwhelming majority was not absolutely proscribed, its services were maintained with difficulty and danger; persecution dogged every movement of its priests, and its laymen were not secure in the enjoyment of property; whilst the great endowments of the Church were appropriated to the support of the Protestant episcopal establishment, whose bishops, imported mainly from England, not seldom returned there as absentees. The Protestants indeed had little more real enjoyment of

Political condition of Ireland in the middle of the eighteenth century.

political privileges. The greater part of the borough representation was in the hands of a very few proprietors or patrons, and the Protestant voters in counties were subservient to the great landowners, whose favour was a shelter to them amid the Catholic masses of the people. The lay members of the House of Lords were the most powerful of these borough-mongers and landowners, while the Lords Spiritual were the Protestant bishops and archbishops, owing their nominations to the favour of the Crown. It should be added that no limit had ever been imposed on the duration of an Irish parliament. In the absence of a dissolution it might continue in existence until the demise of the Crown. The death of George II. being thus necessarily followed by a General Election, one of the first attempts of the new parliament was to put a limit to its own existence. A Septennial Act was passed, and when the English Privy Council with a minute perversity altered the period from seven to eight years the Irish Parliament was wise enough to accept the change. The score of years that followed would probably in any case have been productive of reforms, but the difficulties of the American War powerfully contributed to their success.

Parliamentary disabilities modified.

Catholic disabilities in reference to the holding of land were almost entirely removed, and in 1782 the perfect independence of the Irish Parliament was formally declared by the Irish and admitted by the British Parliament. Poyning's Law was repealed, as was the Act passed in the early years of George I. Ministerial responsibility was not indeed introduced into the government of Ireland. The Irish Administration

Independence of Irish Parliament recognised.

remained dependent upon the Administration of Great Britain, the maintenance of such a system being facilitated by the great influence the Irish Executive was able to exercise on the Irish House of Commons. The Irish Legislature promptly used its unfettered power to pass a Habeas Corpus Act on the English model, and a little later on (1792) it removed the parliamentary disabilities of Catholic voters; but it must be added that the same independence was shown in a jealousy of Mr. Pitt's proposals for Free Trade which rendered them abortive after he had overcome like obstacles in Great Britain; and again when the illness of the King necessitated the establishment of a Regency, the Irish Parliament refused to impose the conditions which Mr. Pitt persuaded the British Parliament to attach to the Regency of the Prince of Wales. It must be admitted that the situation as it existed at the end of the eighteenth century could not be maintained. Parliament was independent without being national, and it was independent in the making of laws but not in the controlling of the administration. Popular dissatisfaction developed into rebellions, and Mr. Pitt was convinced that the only way of restoring order was through a legislative Union of the two islands. The consent of Irish peers and borough-mongers was obtained by the payment of lavish compensation for the loss of their privileges, but in judging of this procedure it must be remembered that in the scheme of reform of the British Parliament which Mr. Pitt had submitted in a Bill in 1785 he proposed to buy out the proprietors of nomination boroughs. The Articles of Union ultimately passed by both Parliaments, and resulting in

Act of Union.

the establishment of a Parliament of the United Kingdom on the 1st of January, 1801, gave Ireland one hundred members in the House of Commons and twenty-eight representative peers, elected for life, in the House of Lords. It was provided also that the number of Irish peers should be gradually reduced till they fell to one hundred.

CHAPTER IX

UNION WITH IRELAND: CATHOLIC EMANCIPATION: REFORMS OF 1832, 1867, 1884

Union with Ireland.

THE Parliament of Great Britain and the Parliament of Ireland were united in 1801 as the Parliament of the United Kingdom.

It is not necessary to examine in detail the story of the way in which this was accomplished. In form each Parliament was a contracting power, and by simultaneous Acts enunciating the same conditions, each consented to merge its existence in a United Parliament starting into life under the conditions agreed upon. A Union of this kind had long been the subject of speculative interest, and statesmen and economists had desired it both for the sake of uninterrupted facilities of commercial intercourse and of the unity of the governing authority. But the difficulties impeding the accomplishment of the Union were considerable. The bulk of the population of Ireland differed in race, and were even more widely separated in religious belief, from the bulk of the population of Great Britain. But these differences cannot be said to have constituted the main hindrances to union, since no one could be a member of either House of Parliament in Ireland who was not a Protestant, and members were as a fact allied

in race as in creed to the people of Great Britain. It may be difficult to gauge the sentiments of the masses of the inhabitants of Ireland at that time on the subject of the Union. The power of England was doubtless regarded as that of a foreigner and an enemy which had imposed and maintained many tyrannies, but the Irish Parliament as it existed was the expression of the domination of a class, and Roman Catholics of education and position turned to the United Parliament with hope of a more enlightened government under it than had hitherto prevailed. In spite of the antagonisms which had been manifested in the recent fierce rebellions, it must be uncertain how far the fusion of the Irish Parliament with that of Great Britain excited popular resentment. There can be no doubt as to the strong opposition among the Protestants in the Irish Parliament. This was overcome with great difficulty and with the narrowest majority after a first failure, and even then was accomplished under the influence of large compensation in titular honours and in money which may not incorrectly be described as bribes. The result was however achieved, and when it is urged that the circumstances of origin of the United Parliament gave it no moral sanction in the consciences of the Irish people, it may be asked, what was the worth of the moral sanction of the pre-existing Irish Parliament? Here as in so many other cases, the origin of power is to be found in a force not yet enveloped in law. The true moral sanction of the United Parliament must spring from what it does and will do. In its history must be found its defence or its condemnation.

A more practical question arises when examination is made into the character of the binding force of the conditions under which the Union was agreed upon. Are these of perpetual obligation, or may they be regarded as provisions admittedly of the highest authority and importance under the sanction of their origin, which may nevertheless be wholly set aside by the United Parliament in the exercise of its deliberative wisdom? The same question might be raised as to the conditions of Union between England and Scotland, though it has in fact been less debated. The answer in each case must be the same, and it seems to be that the United Parliament has the right to revise the terms of Union in any way that may appear good. The Acts of the Legislatures agreeing to unite together contain no provision whatever for dissolving the Union agreed upon. Each Legislature confides the destinies of its country to the United Parliament, subject indeed at the outset to prescribed conditions, but unrestricted by any machinery to impede their modification or abandonment. It is not intended to declare, what is sometimes asserted, that the United Parliament being established as supreme, could never cease to be supreme in every part of the United Kingdom. However fanciful the suggestion may appear, it must still be possible for the United Parliament, if thereto resolved, to separate itself again into two or more parts each starting an independent existence within the territory assigned to it. Putting aside this violent supposition, it must be observed that the United Parliament has in fact more or less seriously altered the conditions of Union between Great Britain and Ireland, and indeed

Its binding force.

Conditions of Union have been altered,

between England and Scotland. The Treaty between England and Scotland fixed the number of members to be sent from each to the Parliament of Great Britain. The Union with Ireland fixed the number of members from Great Britain and Ireland to the United Parliament. The Act of 1832 materially altered the proportion of members between England and Scotland. The Act of 1884 again altered this proportion, and the proportion between Great Britain and Ireland. The fact that the total representation of Ireland has remained unchanged is immaterial, seeing that its relative force has changed; and as there is no power capable of maintaining that number as an irreducible minimum, the number itself must be subject to alteration according to the wisdom of the United Parliament. Another of the conditions of Union between Great Britain and Ireland was the maintenance of the establishment of the Protestant Episcopal Church in Ireland. This Church was disestablished and disendowed by the United Parliament in 1869. A third condition of the Irish Union determined the proportion of the revenue to be raised in the two islands until a certain situation should be realised, when one financial organisation was to be established. This was avowedly a transitory condition, and the situation when it should cease was reached more than eighty years ago. But even if this had not been so, it must have been within the competence of the United Parliament to set aside the arrangement, and to put up in its place whatever might have seemed equitable in its wisdom. In a word, the United Parliament was uncontrolled save by its own sense of fitness and propriety. As will be

and may be altered again.

seen hereafter, it respects the varying circumstances of the different parts of the United Kingdom, and it does so because this seems good to it and not because there is any power outside itself capable of imposing limitations on its action.

Exclusion of clergymen.

Having thus sketched the character of the authority of the United Parliament, the principal changes in its constitution may be briefly noticed. One of comparatively minor importance may first be dismissed. The doubtful question of the eligibility of persons in holy orders was settled in 1801 by an Act excluding priests and deacons, and ministers of the Church of Scotland,[1] but ministers of nonconformist denominations were left eligible and have often been elected. A question of far wider importance presently became a subject of active controversy. It may be remembered that the members of the Irish Parliament were exclusively Protestant. The right of voting had been confined to Protestants up to 1792, when Catholics possessing the necessary qualification were allowed the franchise; but no Catholic could take his seat in the Parliament and none were chosen. In the United Parliament the same disability prevailed. The House of Commons by and by declared in favour of its removal. This policy became an open question within Tory Cabinets, but even if Ministers privately agreed upon the subject among themselves, which they did not, they might have hesitated to recommend the repeal of Catholic

Catholic Emancipation.

[1] Under an Act of 1870 English clergymen can renounce their order and relieve themselves of consequent disabilities. It would seem that orders of the Church of Scotland have not been regarded as indelible, as men who have been ministers have been elected members of the House of Commons without question.

disabilities in face of the stubborn resistance of George III. and the equal opposition, of temper if not of will, of George IV. The solution came from the action of the electors of Clare. In the summer of 1828, soon after the prorogation of Parliament, they chose Mr. O'Connell by a great majority in opposition to Mr. Vesey Fitzgerald, a member of the Government, and it was known that Mr. O'Connell would present himself at the bar of the House of Commons at the commencement of the new session to take his seat, notwithstanding the oath which barred him as a Catholic from doing so. The action of Clare produced the most serious excitement in Ireland, and Ministers felt they had either to yield or to repress discontent that might assume the form of armed rebellion. They yielded themselves, and convinced the King of the necessity of accepting their advice; and the new session saw the legislative removal of parliamentary disabilities of Roman Catholic laymen; clerics being placed in the same position as their Anglican brethren and ministers of the Scottish Church.

Representation before 1832 in England and Wales,

The Act of 1829 was of the greatest significance in connection with the representation of Ireland, and it was followed three years later by a change with a still wider range of influence. The representation of England in the United Parliament had remained practically unchanged in form since the death of Elizabeth. Some of the boroughs had dwindled even to a vanishing point. The greater number, including those owing their parliamentary existence to Elizabeth and her family, had lost any measure of relative importance they once possessed. In comparatively few cases it

was a privilege of voting extended to the inhabitants or ratepayers at large. In very many boroughs the right of election had become vested in a small corporation which filled up its number as vacancies occurred by co-option, and these corporations had passed under the influence of some great proprietor who, through a purchase of property in the borough, had practically become the purchaser of the right of nominating its members. On the other hand, large towns which had come into existence in the changes of industrial development were in no way represented in the House of Commons. Manchester, Birmingham, Leeds, and the like had no representation whatever. Bristol and Liverpool are associated in parliamentary history with the illustrious names of Burke and Canning, and in these ancient towns the freemen were numerous if not independent. London and Westminster were the most conspicuous examples of free and open voting in the kingdom, and the results of the elections there were watched with the utmost intensity as real manifestations of popular opinion. In other boroughs, the constituencies consisted of an irregular number known as 'scot and lot voters,' 'potwollopers,' and the like, and in one instance (Preston) something like universal suffrage prevailed. Members for counties were elected by freeholders, and as these constituted an independent class, county elections afforded some test of national judgment; but in many counties freeholders did not increase in number, and the expense of a contest, when there was only one voting place in each county, and voters were brought up to vote during a period which might run to eleven days, was so enormous as to pro-

duce a most practical limitation of the class of candidates. They must be very rich themselves or stand as the nominees of some rich patron or patrons, to whom they would be bound if successful. In the mass of the smaller boroughs the patron sold the right of representation, or if he gave it to a nominee it was upon the understanding that the nominee voted according to his wishes, if not absolutely as his agent.

Scotland,

The case of Scotland was even worse than that of England. The county electorate presented no body of voters that could be compared to the forty-shilling freeholders of the South. The old feudal franchises had remained unmodified, and the privilege of voting was exercised by very small numbers whose qualifications had become grotesque. Inverness, with a population of 90,000, was stated on the eve of the Reform Bill to have had eighty-eight electors, of whom fifty were non-resident. The burghs were the closest of corporations, the electors in Edinburgh and Glasgow being only thirty-three in each case.

Ireland.

In Ireland the boroughs exhibited similar anomalies, and although the numbers of voters in the counties were relatively large, they were in fact under the control of a few landowners whose power, despite the instance of Clare, had as yet been scarcely disputed by the priests.

The Reform Bill of 1832.

In 1830 a large measure for reforming this system was introduced into the House of Commons. It was proposed to sweep away altogether fifty-six boroughs returning two members apiece, and to deprive thirty other boroughs of one of their two members, to bring into existence such parliamentary boroughs as Manchester, Birmingham, and Leeds, twenty-two in all, with two

members apiece, and twenty-four other boroughs with one member, to trisect Yorkshire into Ridings, to bisect other populous counties, and to add a third member to others which were not populous enough to be bisected, and yet had a claim to additional representation. In all boroughs it was proposed to give the right of voting to householders paying £10 rental and upwards, whilst the rights of freemen existing under some charters were to cease. In counties the franchise was still to be reserved to owners of real property, but in addition to the old freeholders, copyholders and leaseholders were to be admitted. It is not necessary to pursue the fortunes of this proposal in detail, as this story has been sufficiently told in another chapter. Some changes were made in the shape in which it ultimately became law; one, saving the rights of existing freemen, was important not so much for its immediate effect as in laying down a precedent ever since followed of avoiding disfranchisement; another of more pregnant consequences was the addition to county voters of tenants paying £50 and upwards rental. This last was stoutly resisted by the authors of the Bill, who had adopted the principle, vicious in expression as in reason, that borough elections should represent numbers and county elections property. It seems obvious now that the idea underlying this phrase, namely a representation of the different elements making up national opinion, could not be permanently realised by apparently arbitrary variations of the rights of citizens residing in different areas. The Parliament of ten-pound householders, as it got to be called from the predominant franchise in boroughs, remained unchanged in constitution till 1867–68 as far

Franchise in Ireland.

as regards Great Britain, but in respect of Ireland an Act was passed in 1850 establishing an £8 rating franchise in boroughs and a £12 rating franchise and £5 ownership franchise in counties.

Property qualification of members abolished.

Two changes in the eligibility of persons to serve as members of the House of Commons were indeed effected in the interval. The law requiring members to have an income of £300 a year in land had long been evaded by fictitious qualifications; but an unfortunate candidate having been convicted and sentenced to imprisonment for falsely swearing to a qualification before he had been clothed with it even fictitiously, it became necessary to repeal a law frequently evaded and yet at times operating so harshly, and in 1858 every property qualification was abolished. The same year saw the settlement of a struggle that had been intermittently waged since 1832. An Act was passed giving each House power to alter the oath of members, so that it might be taken by Jews, and thereupon Jews who had been elected and re-elected on several occasions, but had been unable to obtain full admission as Members, formally entered the House of Commons.

Jews admitted.

Reform of 1867–68.

The great changes of 1867–68 involved large extensions of the franchise and some slight redistribution of seats. A clause in the Act of 1867, introduced on the suggestion of Lord Stanhope the historian, removed the last relic of the dependence of Parliament upon the Crown by providing that its course should run undisturbed by any demise of the Crown. The most notable fact with regard to the redistribution of seats was that a third member was given to the most populous boroughs, Glasgow, Manchester, Liverpool, Birmingham, and Leeds;

and in relation to these and to the counties returning three members, all which came to be called three-cornered constituencies, a provision was introduced that no voter should vote for more than two candidates. Similarly it was provided that in the city of London with four members, no voter should vote for more than three candidates. These provisions were intended to secure to the minority of voters a share in the representation of the constituency, a result which was attained in all cases except Glasgow and Birmingham, where the minority was too small to win a seat. As regards voters, the franchise was extended in boroughs in England and Scotland to all householders, and in Ireland to £4 householders, whilst in counties the occupation franchise was reduced in England to a rating value of £12, and in Scotland to a rental of £14; a rating franchise in Irish counties having already been enacted. In boroughs lodgers also were admitted to vote if occupying lodgings of the value of £10 a year when let unfurnished. These changes were followed up in the first parliament elected after them by the passing of a law providing for secret voting in elections. Immense importance had been attached to this change which had long been advocated, and the method of voting-papers which formed part of the plan of the new system has greatly improved the simplicity, celerity, order, and certainty of elections. These results would be attained even if the voter were permitted to sign his paper, but a signature or any mark serving to identify the voter involves the penalty of the nullification of his vote.

Another change affecting the eligibility of candidates preceded the last great electoral reform of 1884. It has

Bradlaugh case.

been seen that the parliamentary[1] oath of members had been modified, first to admit Roman Catholics, and then Jews; but it still retained an appeal to God which could only be made with any meaning by a Theist. In 1880 Mr. Bradlaugh was elected, and claimed and made an affirmation on the ground that an oath was not binding on his conscience; but it was decided in the Courts, and this part of the decision upheld on appeal, that the statute under which he claimed to affirm, did not apply to parliamentary oaths. Mr. Bradlaugh subsequently offered to take the oath itself, but on the interposition of a member reminding Mr. Speaker Brand that Mr. Bradlaugh had avowed that an oath was not binding on his conscience, the Speaker refused to allow it to be taken. It is needless to go through the stages of the controversy during that parliament. In 1885 Mr. Bradlaugh was again elected at the General Election, and on his presenting himself to be sworn, Mr. Speaker Peel refused to interfere, declaring that the honourable member took the oath at his own risk. As on many other occasions, Parliament quickly recognised an open scandal, and an Act was passed allowing any member to affirm, who declared his desire to substitute an affirmation for an oath. The removal of religious disabilities was thus as complete as the removal of property qualifications, and any adult male subject not being a felon or lunatic is now competent to serve in the House of Commons.

Final removal of religious disabilities.

This last contest began before, though it was not

[1] A Quaker was permitted in 1833 to make an affirmation instead of taking the oath by the authority of the House of Commons itself; though any doubt as to the validity of this step was subsequently removed by the Act enacted in the same year.

ended till after the Reform Act of 1884. By that statute the household qualification in boroughs in Great Britain was extended throughout all constituencies in the United Kingdom. Other franchises were not disturbed, but it may be broadly stated that a male householder in any constituency in the United Kingdom is entitled to vote in that constituency. The representation of the city of London was reduced to two members. All the counties were subdivided into districts returning one member apiece, and the same process was applied to the larger cities and boroughs. The smallest boroughs were merged in the county divisions in which they were situate, and a limited number of boroughs between those thus disfranchised and those which had been subdivided returned the member or two members to which they had been entitled. No constituency was left with two members except the city of London, the boroughs twenty-one in number to which reference has been made, and the Universities of Oxford, Cambridge, and Dublin. The dominant features of the present organisation are the household franchise as regards voting, and single-member seats as regards constituencies. It has been already suggested that a further progress may be made towards the universal adoption in boroughs as in counties of single-member seats, although a doubt has been expressed as to whether this organisation will permanently endure, in view of the defects in its results which experience may demonstrate.

Reform of 1884.

CHAPTER X

PRIVILEGES OF THE HOUSE OF COMMONS

Freedom from arrest.

THE building up of the House of Commons has been traced through its several stages, and the measure of its paramount power explained. But before entering on an examination of its action as part of the legislative machine, something must be said of its authority and privileges considered by itself. Freedom of its members from molestation is evidently one of the first conditions of its efficiency; and it must possess power to prevent interference with this freedom, and to punish those who attempt to abridge it. The claim to immunity from arrest was at one time extremely general, and extended even to the servants of members. It is now limited to their personal freedom during the sitting of Parliament and for forty days preceding and succeeding the Session. An arrest on a charge of crime was early recognised as outside the privilege, and a long series of cases has now established the principle that the House will not interfere where a member is committed by a judge of the High Court for contempt. With the abandonment of imprisonment for debt, freedom from arrest has ceased to be an important privilege; but it exists, and covering also freedom from molestation can be enforced both by an order of release on the

one hand, and by the Speaker's warrant of commitment of any one guilty of breach of it on the other.

Freedom of speech.

Next to freedom from personal molestation, freedom of speech ranks among the privileges of the House of Commons. No member can be questioned in a court of law or elsewhere outside the House on anything he may have said in debate within it. In this connection the power of the House to exclude strangers from attending its debates may be noticed. Till comparatively recent times any member could enforce the exclusion of strangers by informing Mr. Speaker that he 'espied' them; but the rule is now laid down that upon attention being called to the presence of strangers, the Speaker shall forthwith take the sense of the House on the question of their exclusion. To the same sentiment of irresponsibility may be traced the origin of the ancient rule making it a breach of privilege to publish any report of debates. This rule, which was severely enforced up to an advanced period of the last century, exists now only as a terror against an abuse of reporting. It has never been formally abandoned, but large facilities are now given for taking of reports, the publication of which may indeed be said to be part of the life of the House of Commons; and the old rule would never be invoked, except to punish false or malicious perversions of speeches.[1]

Exclusion of strangers.

Reports of debates.

Examination of witnesses.

It is not one of the privileges of the House of Commons to administer an oath to any witness called

[1] It was ruled by Chief Justice Cockburn that no action would lie for matter contained in a fair report in a newspaper of anything said in the House, and this doctrine has been ratified and extended to other reports by the Newspaper Libel Act.

to answer an examination before the House or any of its committees; but the statutory right was in 1871 conferred both on the House and Committees, and false evidence made liable to penalties of perjury. Oaths however are not administered by Committees except when their enquiries are of a judicial character, and it is not believed that a witness has ever been sworn before the House as a whole. Although witnesses cannot under ordinary circumstances be sworn, their attendance can be enforced, resort being had if necessary to Mr. Speaker's warrant under which a recalcitrant witness or any one in custody and so unable of himself to attend can be brought up for examination.

The testing of election returns.

The House of Commons has always tried to enforce the independence of election of its members. It declares every session that no peer may concern himself in the election of members to serve for the Commons in Parliament; although it is admitted that peers frequently break this rule, and the Commons are without any means of enforcing it. The recognised usage of peers is to abstain from interference in elections after a writ has been issued; but there appears to be no ground for the distinction thus suggested. It seems probable that interference of any kind on the part of peers is an offence against the law of Parliament, and if a case arose in which it could be suggested that the determination of an election had been influenced by such interference, there might be ground for setting aside the return. The jealousy of the House has indeed at all times been watchful of the independence of elections, and formerly it strove to keep the control of everything respecting them in its own hands. A

famous controversy thus arose in 1704, when one Ashby claiming to be an elector of Aylesbury brought an action at law against the returning officer for refusing to receive his vote. The Commons resented this appeal to the courts, and Ashby was ultimately committed to prison under the Speaker's warrant for contempt of their privileges. The judges were divided, but the Lords as the highest court of appeal upheld the right to proceed at law. In the end a prorogation got rid of the dispute, neither side yielding its claim. The larger privilege of the House to examine and determine the validity of the return of any member of its own body has not for centuries been contested; and the claims of petitioners against such returns were decided by votes of the whole House until a sense of the irresponsibility and partiality of such decisions caused the passing of Grenville's Act in 1770 remitting the enquiry into controverted returns to select committees of fifteen. All this is now changed. A definite procedure has been prescribed by successive Acts, under which the rights of persons to be registered as voters are determined in the first place by revising barristers in the several constituencies, and then on appeal by judges of the High Court, whilst the trial of election petitions has been remitted to two judges of the High Court serving on the rota appointed for the purpose. Although a doubt has sometimes been expressed on the point, it seems now certain that the House of Commons has abandoned all its privileges of testing returns. In this connection a special privilege of the House in respect of the filling of casual vacancies amongst its members must be noticed. At the commencement of

Aylesbury case.

Present method.

Writs issued by Speaker.

a parliament, writs for the election of members are issued under the authority of the Crown, but if any vacancy occurs whilst Parliament is in existence, a writ is issued by Mr. Speaker. Formerly this could only be done when the House was in session and by its authority, but Mr. Speaker is now empowered by Statute to issue the writ when the House is not sitting, provided the vacancy is not caused by the resignation of a member.

The House may declare a seat vacant but cannot disqualify any person elected.

The House can thus order a new writ, but it can also abstain from making the order, and it has the power of declaring a seat vacant and of issuing a writ for a new election. No authority can interfere with it in either respect, but the House cannot disqualify any person from being elected, and a constituency may if so disposed return again the person who has been dispossessed, and in the absence of a petition against him, supported by a decision of the election judges, his return would be valid. The House of Commons would be slow to repeat the controversy in which it was engaged with the electors of Middlesex over the return of Wilkes. In the settled and ordered procedure of the law courts is found a trustworthy defence of electors against registration officers, returning officers, and the House of Commons itself. At the same time, the House of Commons has often declared a seat vacant where a member has been proved guilty of some criminal offence, has escaped from justice, or has otherwise appeared disqualified from sitting; but as a writ for a new election has always followed, the constituency has the power of protesting against any injustice to its representative. It is not apparent what would happen if a constituency re-elected a felon, no other candidate standing and claiming the seat.

What has been written suggests certain cases in which the House of Commons, if so disposed, might adopt arbitrary courses without being checked. The House can declare a seat vacant, and a dispossessed member would look in vain to a court of law for redress, however unjust his eviction. The House might follow this up by refusing to issue a writ for a new election, and it could not be compelled to act otherwise. In the days of small boroughs, when corrupt practices had been proved in any contest and the seat had consequently been vacated, it was not uncommon to suspend the issue of a writ for a session, or even to the end of the current parliament, as a punishment to the constituency. Such cases have not occurred in recent years, and are indeed not likely to happen. Apart from declaring a seat vacant, the House has a right to suspend the service of any member, and under its own rules frequently exercises the right as a punishment for obstruction or other disorderly conduct. No outside authority could control it, if it carried this power further and suspended members because they offended the political sentiments of the majority, or even for more arbitrary reasons. Historical instances might be cited of such abuses, and the safeguard against their occurrence lies in a deep-rooted sense of parliamentary principles to which leaders can effectually appeal to control the incipient violence of followers. The House can suspend from its service one or more members, or even a group of members. It is not long since action of this kind was indeed taken. The House can go further. It can declare seats vacant and abstain from issuing writs for new elections. If violence and counterviolence were permitted to run their course such

Possible abuse of unchecked powers.

Real safeguard.

fatal extremes might be reached, and party feeling sometimes runs high enough to occasion anxiety as to what will follow. Parliamentary tradition and habit may however be trusted. Individuals may still sometimes suffer from the disorderly clamour of an excited majority; but no definite action of a formal kind for silencing a member or extinguishing a minority need be apprehended.[1] The sanction which the House employs for the punishment of offenders against its privileges is committal to prison under a warrant of the Speaker for contempt. This warrant is however only valid till the end of the Session, when the offender must be released. Formerly fines were imposed, but as these could only be enforced by committal, and committal expired with the Session, the infliction of a fine was sometimes nugatory, and the practice has been long discontinued. Committal itself is indeed now most rarely resorted to, and the House has sometimes been content with a solemn warning addressed by Mr. Speaker to offenders at the bar, which would perhaps cease to be serious if it were not excessively rare. A warrant of committal for contempt is a sufficient answer to a writ of *habeas corpus*, the judges refusing to go behind the warrant; but it would seem that if the warrant specified some action which on the face of it could not be construed as contempt, the judges would be prepared to deal with it as insufficient. This is a contingency which must be regarded as one of an extremely speculative character.

Speaker's warrant and courts.

[1] In 1881 a motion was revived, which had not been heard of for two hundred years, that a particular member be no longer heard. The only result was an increased disorder. The motion was adjourned and will never be repeated.

CHAPTER XI

THE HOUSE OF LORDS: PAST AND PRESENT

Origin of the House of Lords.

IT is not within the scope of this book to enter into an examination of the origins of the House of Lords. The early Norman and Plantagenet kings had their Great Council about them, some at least of whose members from time to time attested, if they did not confirm, their acts. The Council varied within elastic limits, sometimes consisting of little more than the principal officers of State, at other times comprising all the greater tenants, the bishops, and some of the principal abbots. As son followed father in his tenancy, so was the son summoned after the father to the Council. But the summons was not necessarily transmitted by descent. If not purely personal, it should be held as attached to the holding of the lands which passed, rather than to the family through whom the lands descended. It is indeed still suggested that one or two of the existing peerages are held by virtue of the possession of particular Honours — that is to say, of castles or lands so designated by way of pre-eminence, but the suggestion can scarcely be regarded as more than an antiquarian fancy. It is not easily to be believed that on the sale of any such Honour the purchaser would be admitted to sit in the House of Lords as a consequence of his purchase.[1]

[1] It has been recently decided that the Crown cannot attach to the grant of a peerage a provision that it should shift with the shifting of

Becomes independent of the Crown.

In these earlier times the summons was clearly dependent on the will of the king, although it may be admitted that the king would not omit to summon any of his greater tenants or barons, especially where the tenant had been admitted to inherit from a father who had been summoned. Constant usage converted customs and privileges into rights; and when the Tudors came to the throne the titles of entrance and of succession in the House of Lords were very much the same as they are to-day. All grants originating in the Crown, a writ of summons was sent afresh to every peer at the commencement of every parliament, and on the death of a peer his successor presented a petition for the issue of a writ to himself, until which application he was not summoned. The original grant might be, and generally was, to the grantee and the heirs-male of his body. In some instances however it was to the grantee and the heirs of his body, and in one case at least under the Tudors the grant was to the grantee and to his heirs-male generally.[1] Whatever the terms of the grant, and whatever the power of the Crown to withhold the issue

certain designated land. Mr. Sackville West, next brother to Earl de la Warre, being in possession of certain estates subject to the proviso that, if his elder brother died leaving no male descendant, and the De la Warre estates passed to him, the estates which he held should thereupon pass to his next brother, was in 1864 created Lord Buckhurst, with a provision that in case of his succeeding to the De la Warre property and earldom, the Barony should pass to his next brother. Earl de la Warre did die a bachelor, and his brother thereupon succeeded to his title and property, and the estates he held passed to his next brother. It was held, however, that the Barony of Buckhurst did not pass, the shifting provision being declared invalid and void.

[1] This was the case of a revival of a peerage, and the intention of the peculiar limitation apparently was that it should pass to collaterals, who might have inherited the original peerage.

of a writ of summons from any particular peer at the commencement of a new parliament, it had come to be settled procedure to determine the forfeiture of a peerage by Act of Parliament only. Whatever might be then thought as to the power of the Crown to decline to summon a peer, it was practically settled that the Crown could not take away the peerage, nor was it possible in England for a peer to surrender his right and title to the Crown. Besides the lay peers, who had become very few in number at the accession of Henry VII., the bishops were summoned, and until the suppression of monasteries the principal abbots. The Lord Keeper (generally Lord Chancellor also) presided over the sittings of the Lords, though not necessarily a member of the body; but he had and has no authority over their proceedings, and indeed the Lords then, as now, were not controlled by any rules of order in debate. The abbots dropped out of the House of Lords, and the lay peers were added from time to time by the favour of the Crown as great possessions or personal liking suggested, but the position of the House of Lords otherwise remained unaltered down to the troublous times of Charles I.

That monarch started with as little respect for the privileges of the Peers as of the Commons. He arbitrarily imprisoned the Earl of Arundel in the Tower, till the Lords remonstrated that such an arrest was a breach of their privilege; and at the commencement of the Parliament of 1625 he withheld the usual writ of summons from the Earl of Bristol; when the Lords again showed their independence by declaring this step beyond his prerogative, and the summons was issued,

thus settling what before might have been unsettled.[1]

Is abolished and restored.

In 1641–42 the House of Lords was attacked in another way. An Act was passed excluding bishops from attendance in the House. This was done with perfect regularity of parliamentary procedure. A Bill was introduced in the House of Commons by a resolution, and though rejected by the Lords on the first occasion, was subsequently passed by them and assented to, however reluctantly, by the king. In the war that almost immediately followed, the greater number of the peers rallied to the king or withdrew from public life; but a small remnant continued to sit and co-operate with the majority of members that remained to constitute the House of Commons, until the final stage, when they refused to approve the Act establishing the High Court to try the king. Even after the king was beheaded, half a dozen peers met and wished to join the Commons in settling the government of the country; but the Commons replied one week after the execution by resolving 'that the House of Peers was useless and dangerous and ought to be abolished.' The period of revolution may be passed over with the observation that the Lord Protector's attempt to reorganise what had become a united Commonwealth involved the establishment of a new House of Lords, though its shape cannot be considered to have been definitely settled. In the first parliament elected after the Restoration, Lords and Commons resumed the position they relatively occupied immedi-

[1] The King subsequently disabled Bristol from attending Parliament by causing his Attorney-General to prefer articles of charge against him, but did not interfere with the rights of the peerage.

ately before the Civil War, and one of the first steps taken by the new parliament was the passing of an Act restoring to the Bishops their seats in the Upper House. The parliamentary regularity of their exclusion was attested by the necessity of parliamentary restoration.

Changes in consequence of the Union with Scotland.

In the years that followed no changes were made in the constitution of the House of Lords. New peerages and promotions in the peerage were freely made, but always following the old order, until the Act of Union with Scotland, when it became necessary to provide for the representation of Scotland among the Lords. The Act disabled the Crown from creating any more peers of England or of Scotland. Thenceforward peerages were to be peerages of Great Britain, and in the United House of Lords all peers of England would be entitled to sit, and sixteen peers of Scotland to be elected by the full body of Scotch peers at the commencement of each parliament. It has been elsewhere suggested that the prerogative of the Crown to create new constituencies to send members to the House of Commons ceased when the Act of Union made the representation in that House, of England and of Scotland, a matter of parliamentary sanction; and it may be argued that the Act was not without effect on the position of the peers. The prerogative of creating fresh peerages was carefully preserved, but if any doubt lingered after Lord Bristol's case as to the rights of peers to be summoned at the commencement of any parliament, that doubt must be considered to have been finally dispelled by the Act of Union. The Act requires the issue of a writ for the election of Scotch representative peers, and this would seem to involve a parliamentary duty to issue writs of

summons to peers of England and of Great Britain. Viewed in this light the issue of a writ of summons becomes a purely ministerial proceeding, as to which there is no discretion, although no legal authority is entitled to enforce its exercise.

Attempts to limit number of peers.

The accession of George I. was followed by an attempt on the part of the House of Peers itself to alter its position in a way that would probably have been fatal to its permanent existence, had it been successful. A Bill was introduced and passed the Lords imposing a fixed limit to their number. Twenty-five hereditary peers were to take the place of the sixteen elected Scotch representative peers, and the number of the rest of the peerage was to be limited to 184, thus leaving a margin of six to be filled up. The rejection of the Bill by the Commons saved the Lords from the attacks that would have grown in number and violence, had such an invidious barrier of exclusion been established. Throughout the rest of the century the possession of parliamentary power by the owners of boroughs was continually used to obtain admission to the House of Lords; and had the Act limiting the number of peers been passed, it must have been repealed, or the House of Peers exposed to the most serious jeopardy. When membership of the House of Commons became a matter of frequent purchase, the power of the possessors of wealth to enter the House of Lords almost necessarily followed, and the sentiment prevailing at the close of the century is exemplified in the opinion attributed to Mr. Pitt, that any man with a certain fixed income was entitled to a seat in the Lords if he wished it.

The Act of Union with Ireland followed, with some modifications, the method of the Scotch Act. The

peers of Ireland were entitled to elect twenty-eight representatives, but each elected peer was elected for life and not for a parliament. The power to create new Irish peerages was not destroyed, but was limited, so that new peerages should only be called into existence as older peerages became extinct, and that in the proportion of one to three, until the number fell to one hundred.[1] Any Irish peer, not being a representative peer nor joining in the election of representatives, is qualified to sit in the House of Commons for any constituency in Great Britain, a privilege entirely debarred to Scotch peers. The Act of Union further provided for a representation of the Irish archbishops and bishops in the House of Lords, but this was abolished when the Church of Ireland was disestablished.

Changes on the Union with Ireland.

As the Irish representative peers are elected for life, and the whole body is convoked for the election of a vacancy when it occurs, it easily follows that the twenty-eight representative peers belong exclusively to the party of the majority in the Irish peerage. It is not quite so certain that the sixteen representative peers of Scotland elected at the commencement of each parliament should all be of the same political complexion, but in practice this too is secured. A suggestion has been from time to time made to alter the methods of election of these representative peers, so as to secure in some degree a representation of the different opinions that may be found in Scotland and in Ireland, but such

Representative peers.

[1] The House of Lords addressed the Crown in 1875, praying that no more Irish peerages should be created. The address was graciously received, but in 1898 Mr. Curzon was created Baron Curzon of Kedlestone in the peerage of Ireland on being made Governor-General of India.

attempts have so far been unsuccessful, and have indeed not excited much attention.

The position of the House of Lords since 1832.

The peerage thus described must be recognised as a body into which the possessors of great wealth, especially of wealth in land, easily found admission, and as up to 1832 a very large proportion of the seats in the House of Commons were under the control, if not the property of, the same class, it follows that up to that time the government of the country was practically vested in an oligarchy of great inherited wealth, but unlike other oligarchies continually admitting the heads of more recently enriched families. It is true that the House of Lords was also recruited by successful lawyers attaining the office of Lord Chancellor or other high judicial positions and by naval and military commanders of distinction ('a peerage or Westminster Abbey' was the aspiration of Nelson); but these recruits were already sufficiently wealthy to belong to the same class or were enriched by grants of pensions to enable them to hold an analogous position. The struggle of 1832 was a struggle on the part of the other classes of the community working through such of the constituencies of the Commons as were free, and overawing not a few of the rest, to transfer the power of government to a wider representation of the people at large in the House of Commons. The incidents and result of the struggle have elsewhere been glanced at, and it has been also noted as universally admitted, that the House of Lords must now always defer to the will of the nation as expressed in the response to an appeal at a General Election. The strongest illustration of this deference is perhaps to be found in the circumstances of the dis-

establishment and disendowment of the Irish Church. This was a change which would naturally be regarded with extreme disfavour by the Lords, and when in 1867 a preparatory Bill was sent up from the Commons to prevent the creation of any more vested interests in respect of ecclesiastical preferment in Ireland, it was decisively rejected. But the election in the autumn of 1868 was fought on the issue of Irish Disestablishment, and when the complete Bill came up in 1869, the principle was accepted as decided by the constituencies, and the contest turned on details which admitted of accommodation, and were in fact settled with comparatively little difficulty.

Its future.

The House of Lords since 1832 has received additions from time to time much as before. Its numbers have grown alongside the wealth of the nation to such a degree as to excite speculation as to whether it would be possible to maintain indefinitely this continuous increase. It has checked, modified, and delayed proposals of legislation sent up from the House of Commons, and on some minor matters not of wide and general interest, it has maintained an attitude of resistance; but in rejecting larger proposals, it has taken its stand on the necessity of consulting the nation, whose voice is recognised as the ultimate power. The House of Lords in recent years has almost entirely ceased to originate legislation. Bills consolidating particular branches of the law and an administrative measure or two of a non-contentious character may be introduced into the Lords; but even these experiments are of hazardous fortune, and Governments of all parties find themselves constrained to bring into the House of Commons first the

measures on which they set store. The House of Lords remains however the barrier moderating and obstructing movement; and though discretion in the exercise of its powers may keep them theoretically unimpaired, it may not be amiss to enquire whether any change can be detected as in progress, or can be anticipated as probable if not inevitable.

Life-peerages.

In the year 1856 the Crown was advised to bestow a peerage for life on Sir James Parke with the title of Baron Wensleydale. Peerages for life had frequently been created, although they had been perhaps exclusively bestowed upon women; but the House of Lords, while fully recognising the prerogative of the Crown to create life-peerages, passed a resolution declaring that life-peers were not entitled to sit and vote in the House of Lords. It could scarcely be expected that the members of an hereditary peerage would consent quietly to an exercise of the prerogative that had long since fallen into disuse, the employment of which threatened their legislative powers; and the attempt to introduce life-peerages in this manner was certainly unlucky. It must be noted in passing that the resolution of the Lords admits that there may be peers who are not legislators, nor like Scotch and Irish peers represented by brother legislators.

Law Lords.

The attempt to create life-peers by prerogative failed, but there has since been a minute addition of life-peers authorised by statute. The House of Lords was for a long time in fact, as it still remains in name, a Court of ultimate appeal in all causes in the United Kingdom not arising in the Ecclesiastical Courts. It was this Court of ultimate appeal for England up to 1707, for England

and Scotland up to 1801, when it became the Court for the United Kingdom. The House at large was the Court, and down to the end of the last century lords learned and unlearned voted freely on decisions. Those who had not been trained as judges or ex-judges gradually withdrew from hearing and deciding appeals; but it was not till the year 1845 that the abstention of unlearned lords became recognised as a moral obligation. In an appeal on the validity of the conviction of Mr. O'Connell the Law Lords were divided by a majority of one against the Crown, and certain lay lords wished to support the Government and the conviction by their votes. But the Lord Chancellor (Lyndhurst), acting, it would seem, more under the influence of Sir Robert Peel than of his own motion, discountenanced their action, and they abstained from interference. From that time the House of Lords as an appellant Court confessedly consisted of the Law Lords only, and when in 1875 the judicial system was reorganised, part of the scheme was to set up a supreme Court of Appeal entirely detached from the House of Lords. It was urged that it was inexpedient that the position of a member of the Supreme Court should be limited to persons who were ready to sustain the burden of an hereditary peerage. On the other hand, there was a great jealousy of a change that would take away from the House of Lords the lustre and dignity conferred upon the body at large by the fact that the supreme Court of Appeal consisted of a few of its members. In 1876 a compromise was agreed upon which enabled life-peerages to be conferred on four Law Lords, and the Court of Appeal within the Lords was expressly confined to those qualified to be

members of it. The Act as originally passed allowed these life-peers to sit and vote as legislators only as long as they were Lords of Appeal; but it has since been amended so as to preserve their legislative functions after they had ceased to serve as Appeal judges. Life-peerages have thus been introduced, though on a very limited scale, nor have suggestions been wanting for adding to them. Bishops are life-peers and there might be others neither legal nor clerical.

Non-attendance and remedies for it.

The continuous growth of the House of Lords may be checked by the increase in life-peerages. Life-peers pass away, but an hereditary peerage may descend to a man who is quite uninterested in political action, and is rarely found sitting in the Legislature. The ordinary attendance of the Lords is never large, and its *quorum* is indeed limited to three. The absence of work to be done is to some extent an excuse for non-attendance, but non-attendance prevailed in the days when the Lords were a more active branch of the Legislature. Proxies were then allowed to be used by those who were present on behalf of the absent, and a peer could even be entrusted with a general proxy, not limited to a special occasion. Proxies could not indeed be counted in Committees on Bills, and the number of proxies which a peer might hold was latterly reduced to two; but in 1868 the Lords passed an order against calling for proxies, and it may be inferred that they will never again be employed. Peers are not now allowed to vote in debates which they have not heard, and in respect to matters of which they have had no specific notice; but the spectacle is now presented, at distant intervals, of a crowd of peers, ordinarily inattentive to their legislative duties, coming up

to swell an already large majority. The political expediency of such demonstrations must be doubtful, and among possible changes in the working of the Upper House two may be named: the first, that of vesting the legislative functions of peers in a smaller number chosen by the main body; and the second, that of disabling from voting those who have not attended for a prolonged period until they recover the right by adequate attendance. The former suggestion may be traced to the representation of Scotch and Irish peers. The latter is probably based upon some colonial precedents where the Upper House is nominated, and members lose their rights through non-attendance. A precedent for disabling peers from exercising their legislative functions, without however losing other privileges of peerage, was set in 1871, when it was enacted that on a peer becoming bankrupt he should lose his right to sit and vote, and no writ of summons should be issued to him whilst his bankruptcy lasted.

Other proposals of reform.

Suggestions such as have been glanced at might gradually modify the composition of the House of Lords; but, unless the introduction of life-peers were continuously if cautiously extended, no material change would be effected. Proposals of a wider character point either to greater changes in the composition of the House, or to stricter limitations of its veto on legislative proposals. The first would transform the House into a combination of representation of the hereditary peerage, certain *ex officio* members and members elected by elected local authorities of sufficient importance. The second, taking note of the admission that the Lords must defer to the verdict of a General Election on any specific issue, would

make their rejection of a Bill valid only from one parliament or even from one session to the next, when it should become law over their dissent if presented again by the House of Commons in the same form. It may be said however of all proposals like these, that they require for their adoption a popular resolution in their favour which the Lords may be slow to provoke. The public judgment may long tolerate a machine which works without unnecessary friction, although it would not construct it in the same fashion if it had to be for the first time devised.

Impeachment.

A few words may be added on the process of impeachment, under which the Lords were the judges and the House of Commons the accusers of persons, whether lords or commoners, charged with high crimes or misdemeanours affecting the realm. This form of prosecution of state-offenders played an important part in the seventeenth and even in the eighteenth century, as illustrated by the trial of Warren Hastings; but though copied and even enforced in other constitutions it must be regarded as fallen into desuetude among ourselves. President Johnson was impeached before the Senate of the American Congress in 1867, and escaped conviction only because the majority condemning him fell short by one of the two-thirds required by the constitution; the French Senate is now (December 1899) sitting as a High Court on a similar process; but an impeachment could not now be begun at Westminster. The procedure is uncertain and dilatory, as was exemplified in the trial of Hastings, and there prevails to-day a strong and probably growing distrust of the justice of a multitudinous tribunal. Moreover, the courts of law afford the surest

means of obtaining conviction and punishment for actual crime, whilst more ordinary official misconduct can be promptly investigated by committees of either House, and is in general sufficiently met by that dismissal from place from which no functionary is exempt. It may be confidently declared that the rusty weapon of impeachment will not again be taken from the political armoury.

Lord High Steward's court.

There is yet another class of cases in which the peers have sat as a court of law which cannot be dismissed as obsolete. This is where one of their body is accused of treason or felony or misprision of treason and claims his privilege to be tried before his fellow-peers. If Parliament is sitting his case according to past custom would be removed to the House of Lords, and a Lord High Steward appointed to preside on the occasion. If Parliament is not sitting, the Lord High Steward is similarly appointed and the peers are summoned to form his court. The verdict is by a majority, which however must contain not less than twelve. It is sixty years since such a court sat, and it may be surmised that if unhappily the occasion arose of putting another peer in this fashion on his trial there would be a strong feeling that the process should be abolished and the accused tried in an ordinary law-court, where indeed he might claim a jury of his peers. This feeling cannot but be strengthened when it is remembered that for misdemeanour a peer is tried in the ordinary courts.

May a peer decline his seat?

It has been seen that a peer is entitled to have his writ of summons issued at the commencement of every parliament; but the writ is not issued to a peer upon whom the dignity has descended until he petitions the Crown for its issue. The question arose in 1897

whether a member of the House of Commons upon whom an earldom had descended could continue to sit in the Lower House by abstaining to apply for a writ. It appeared that there was no obligation to make such an application, and that in the absence of it men had lived and died without entering the House of Lords though fully entitled to do so. It was further stated, and apparently with truth, that in one instance at least a person had served through one parliament in the House of Commons whilst possessing an unrevealed title to a peerage. The case in 1897 was one of novelty, since no one had before openly asserted his claim to sit as a Commoner whilst the House of Lords was open to him; and the House of Commons might have decided the issue upon more general considerations of public policy than were discussed on the occasion. The House of Commons decided that the claimant was disabled from remaining a member of its body; but as the House does not bind itself by a decision of this kind the question may possibly be re-opened and reconsidered in spite of the precedent. If there were found in the House of Commons a majority who looked upon the House of Lords as a strong wall obstructing progress, such a majority would perhaps welcome the prospect of loosening its structure by allowing ambitious members upon whom peerages had descended to remain in the Lower Chamber.

CHAPTER XII

THE CROWN: PRIVY COUNCIL: CABINET

IT has been seen that Lords and Commons were originally called together by the will of the King, as they are still in form summoned to Parliament by writs from the Crown. The Great Council of the nation, as it was sometimes called, was so much the creature of the monarch that it dissolved *ipso facto* on his death. It was long thought useful, if not necessary, to obtain renewals of charters and grants of privileges from each succeeding sovereign, as though they had lapsed at the death of his predecessor. Under the feudal monarchy everything originated with the King. His right of descent was the predominant fact, in subordination to which all powers and authorities existed. There had not indeed grown up that peculiar notion of the separation in blood which was developed, partly through foreign influence, under the ceremonial of later centuries. The King was not the less the sole fount of power, and nothing could detract from the fulness of his inheritance. It might be a question which of two competitors had the better claim to succeed; but there could be no dispute as to the quantity of authority that devolved on the person best entitled. In the two instances in which kings

Hereditary descent of the authority of the Crown

were deposed, an undiminished kingship passed to their successors. The Wars of the Roses were closed by the accession of Henry VII., who had in himself no title to the throne; but whether he ruled by his relation to his mother or to his wife, the persistency of the old principles of descent was strongly illustrated under his successors. Henry VIII. was authorised by Act of Parliament to dispose of the Crown by his will, and he exercised his power with perfect formality; but the will was in fact set aside by the succession of his children and of James I. according to the recognised order of descent. The tenacity of the right of descent suffered the rudest check under Charles I.; but it reappeared under the Restoration with every mark of recognition; and it was not until the Revolution of 1688 and the Act of Settlement that the parliamentary disposition of the Crown was fully and finally established. The abortive design of setting it aside on the death of Anne served in fact to prove the strength of the new principle; and on the only occasion which has since arisen, involving in any way an examination of rights of succession, the authority of Parliament was further confirmed. When George III. became incapacitated by illness for the exercise of the functions of royalty, Mr. Fox was betrayed into arguing that the Regency devolved as a right on the Prince of Wales; but no one now contests the position successfully taken by Mr. Pitt that it was a matter to be settled by Parliament. The succession to the Crown itself is indeed a matter of parliamentary arrangement. It is vested in the descendants of the Electress Sophia, subject to the limitation that the successor is a Protestant.

set aside at the Revolution.

When Parliament, which must here be understood to mean the two Houses, undertook to regulate the descent of the Crown, the position of the Sovereign in the Constitution underwent a natural change. Something like a complete inversion has in fact been accomplished. The will of the Crown is now the will of the Minister, and the Minister is a person possessing the confidence of the House of Commons which represents the will of the nation. If on rare occasions of transcendent importance the Crown sets aside the will of the Minister, this step is defensible only on the assumption that the Minister no longer represents the national will, and it cannot be taken unless another Minister is found ready to accept the responsibility of a different advice. It does not follow that the personal influence of the sovereign is entirely lost in the working of the organisation of the State. In matters of appointment not perhaps of first-rate importance, personal preferences may prevail, though the allowance of such preference must depend on the readiness of the Minister to consent to it; and so it could not extend to cases where the maintenance of a policy was involved in the choice. So far did Sir Robert Peel carry this view of ministerial right that he declined to accept office, when called upon to form an Administration in 1839, because his recommendation that a fresh appointment should be made of ladies in the higher posts of the Household was resisted. The difficulty in this case was perhaps a little overstrained on both sides, and it could scarcely recur to-day. It must indeed be always a matter of discretion how far the influence of the Sovereign in

Since then the Crown has acted through Ministers.

Survivals of personal influence of the Crown

in appointments,

appointments may be allowed and how far it should be withstood. In the days of George III. ambassadors and bishops were often chosen through royal preference, and a Lord Chancellor was once so selected, with unhappy results. George IV. when Prince Regent constrained Lord Eldon to appoint a personal friend Master in Chancery. The memoirs of our own time speak of differences of opinion respecting appointments to the highest offices in the Church, which were however ultimately settled between Sovereign and Minister. Beyond the personal preferences involved in the appointments to certain offices, the influence of the Sovereign may be felt in the conduct of questions of larger policy. The experiences of long years and the intimacy that has been possible with personages of the highest authority abroad may bring elements of weight into consultation, especially in respect to foreign policy, with the result that the suggestion of the Sovereign may influence the judgment of the Minister, and the advice of the latter may receive a different shape and direction from that which it would otherwise have assumed. The influence of the Crown must not however be permitted to obscure in any degree the responsibility of the Minister who ultimately tenders the advice upon which action is taken. Mr. Disraeli was severely criticised in 1868 for having on a critical occasion apparently given the Crown the option of determining the precise course to be taken when he should himself have definitely recommended it. He was completing, in respect of Scotland and Ireland, the parliamentary reform he had carried through in England and Wales, when Mr. Gladstone

in foreign policy.

An illustration of its limits.

inflicted on him a severe defeat on the subject of the disestablishment and disendowment of the Irish Church. The balance of convenience, approaching to necessity, required that he should complete the task of parliamentary reform before resigning or submitting the new issue to the country; but in announcing to the House of Commons the course he intended to pursue, he was accused of sheltering himself behind the authority of his sovereign. The dispute viewed retrospectively may seem to turn on the use of words and phrases, but it illustrates clearly and sharply the indivisible responsibility of the Minister. Light might perhaps be thrown on the delicate question of the constitutional limits of the action of the Sovereign by a reference to the action of colonial governors. It has appeared that a governor has gone to the length of dismissing a Ministry possessing the confidence of the popular House of Assembly, and the maxim that an agent can have no more authority than his principal warrants us in saying that what a colonial governor is permitted to do lies within the power of the Sovereign.

Growth of Privy Council.

It is not intended to retrace the process of transition by which the Crown, from being almost autocratic, became the minister of its Ministers. From the earliest times there were great officers about and attendant upon the king to execute his will in their several offices; and as it would always be easy to call this lesser council together, it would not have been unnatural to claim for it an authority equal to that of the great council of Parliament. The danger may be traced in different periods of our history; but it was

the happy fortune of England that it was met and resisted at the critical time when in other countries it was suffered to make head. In the days of Elizabeth the Queen in Council threatened to assume a law-making power, especially when Parliament was not sitting; but the peril that might have developed into a shipwreck of national liberties was happily dispelled under her successors. The council thus spoken of consisted of the chief officers in Church and State; but the dignity and style of member of the Privy Council was retained by the person who had filled a great office after he had retired from it, unless his name was struck off the list by an act of royal disfavour. In this way the Privy Council gradually grew to be what it is to-day. It consists of men who fill or have filled great positions, or have otherwise been privileged to be called by the Crown to the status and dignity.[1] The Privy Council is never summoned as a body except on the demise of the Crown.[2] It has no legislative authority. It may and does proclaim law on special occasions, though its proclamation cannot make anything legal or illegal which is not so through higher authority. Certain administrative acts are executed at its meetings, some under the common law, others under special provisions of Acts of Parliament. Such transactions amount to little more than solemn registrations of ministerial acts. They are executed at meetings where

[1] Up to recently no one was made a Privy Councillor who had not filled some public office, but with the last decade or so members have been added without any distinct qualification of this character.

[2] The Lord Mayor of London commonly attends on this occasion, although not a member of the Privy Council.

two or more members are present whose attendance is a matter of arrangement by the Ministry.

Rise of the Cabinet.

Although the Privy Council as a whole is a mere registering body, there are committees of it charged with functions of the highest importance; and chief amongst them that most loosely constituted committee, the Cabinet Council. The Council, as has been said, consisted originally of the chief Ministers attendant on the Crown. The Sovereign sat with these Ministers in deliberation, and the Sovereign still presides over those meetings for purposes of registration which have been mentioned. At the councils where there was deliberation, the attendance was naturally confined to the actual Ministers of the hour, and this constituted the inner working committee of the larger body. It was a step of great importance when the members of this committee began to assemble and deliberate without the presence of the Sovereign. Such conferences in an embryonic and secret form must have existed from the earliest times. They became more frequent after the Restoration, when the word Cabal was invented, and the meaning soon attached to it illustrated the light in which these meetings were regarded. Under Anne what was frequent became customary, and the ignorance of the English language of the first Georges precluding them from joining the consultation, what was customary became the rule. The character of the Cabinet Council has not since been altered, though its numbers have lately shown a strong tendency to increase.

Formation of a Cabinet.

When a statesman is summoned by the Crown to form an administration, his first duty is to invite

others to fill the great offices of State. He himself becomes and is called Prime Minister. He is so by virtue of the fact that he was the first to receive the summons of the Sovereign, and it was on his invitation that others have joined him; and although among his colleagues there may be men of the utmost weight in counsel and in public respect, he is still entitled to exercise, and commonly does exercise, an unquestioned superiority over all. It was indeed formerly asserted that the immediate Ministers of the Crown were all equal to one another, and that no one could claim to be first; but this declaration would now be a pedantic affectation. It would be something worse. In the recognition of the position of the First Minister the unity and solidarity of an administration are established and maintained. The Prime Minister commonly takes to himself the office of First Lord of the Treasury, to which are attached few departmental duties; but this is only a matter of convenience, and Lord Salisbury has twice preferred as Prime Minister to fill the office of Foreign Secretary.[1] The men whom the Prime Minister associates with himself as Ministers have probably been engaged in active political co-operation with him before, though from time to time he may seek additional strength in fresh alliances. The names of those whom he is enabled to enlist are submitted to the Crown for approval with an intimation as to the composition of the Cabinet. Some officers, the Lord Chancellor, the

[1] Mr. Gladstone in 1880–81, following the example of Pitt and other presidents, joined the office of Chancellor of the Exchequer to that of First Lord of the Treasury. Lord Salisbury, whilst remaining Prime Minister, is now (October 1900) vacating the office of Foreign Secretary and accepting the dignified sinecure post of Lord Privy Seal.

Lord President of the Council, the Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, the First Lord of the Admiralty, are always included in the Cabinet; but there remain other offices the holders of which may or may not be invited into this inner circle according to their personal qualifications. Some, or even many, of the persons thus called together need not have been Privy Councillors before. They are summoned to the Council as the result of their acceptance of their several functions.

Solidarity and secrecy of the Cabinet.

Additions may be made to the Cabinet from time to time by the simple process of an invitation on the part of the Prime Minister to the new member to attend; and this body the cardinal importance of which, in the working of the constitution, will hereafter appear, has no legal form or recognition, and might almost be described as a 'fortuitous concourse.' No record of its deliberations is maintained. No authoritative summary of its conclusions is published. Nothing is known of the different opinions that may be exchanged or the plans that may be discussed, until a definite result is reached in some act of policy recommended to the Crown or some proposal of legislation submitted to Parliament. This mode of secrecy in the working of the Cabinet maintains its unity as the central power of the Government for the time being. The memoirs of the past reveal discords in former Cabinets, and the possibility of such discords can never wholly pass away; but as long as the Cabinet holds together, it is one. Each member is responsible for every other member, and the solidarity of the combination is complete. When, as sometimes happens, a Minister resigns

because he differs from his colleagues, he commonly obtains, if Parliament is sitting, a release from the obligation of secrecy, so that he may explain in his place the reason of his retirement.

The functions of a Prime Minister.

It has been suggested that in the larger Cabinets of later years unity and the easy dispatch of business have been secured by the existence of an inner Cabinet within the Cabinet, the decisions of which habitually command the deference of their colleagues; but besides this, consultations of the whole body are frequent, whenever the movement of public affairs requires them. The actual working of a Cabinet must vary with the different idiosyncrasies of Ministers, and especially of the Prime Minister. The memoirs of Sir Robert Peel sufficiently reveal the course of business in his last Ministry. He himself was First Lord of the Treasury; but he kept himself in constant touch with his chief associates, each of whom referred to him directly on any matter of great importance, whilst with one or two, pre-eminently with Sir James Graham, he was in the closest personal relations, revealing his innermost thoughts. Sir Robert thus knew what each department was doing, and his knowledge not unfrequently meant direction as well as approval. Foreign affairs, the affairs of India, Ireland, and Canada, and domestic affairs were referred to him in turn, whilst in addition to this constant supervision he took into his own hands, although not Chancellor of the Exchequer, the delivery of budgets, and the conduct of such a Bill as that regulating the note issues of the Bank of England. It is possible, and indeed certain, that with the increased multiplicity of affairs, the

development of the functions of government, as well as the growth of the Empire, no Prime Minister could now maintain the same intimate association with the several departments of State. But Mr. Gladstone's conduct of office during his first, if not throughout his second and later administrations, is believed to have followed the fashion of Sir Robert Peel, and it may be remembered that he took to himself the carriage of the several branches of his Irish legislation. Besides however the relations between the Prime Minister and his colleagues, the latter are kept acquainted among themselves with all that is critical in the action of each other. Purely departmental business need not and does not pass beyond the discretion of the individual Minister. But whenever any question of policy arises, and especially when any international or colonial episode of importance is in progress, memoranda are circulated among the Ministers, so that each is charged with a knowledge of what is going on, and has an opportunity of intimating an opinion upon it. It is in the prosecution of such matters that the members of the Cabinet are from time to time called together in Cabinet Councils to discuss the situation and to determine what shall be done. Besides these meetings there are others which may be regarded as of a more routine character, and which are necessarily held at particular periods. The legislation of the next Session is settled at Councils held at the end of the autumn. The leading Bill of the coming year may be marked out by circumstances which Ministers recognise rather than control; but the propriety of promoting other Bills is urged by separate Ministers and their

Cabinet Councils.

claims compared. The scale of expenditure on the Army and Navy is, about the same time, settled in Cabinets in which the First Lord of the Admiralty, the War Secretary, and the Chancellor of the Exchequer may be supposed to take the leading parts. After Bills have in principle been determined upon, the examination of them in some detail is often referred to a Committee of the Cabinet, to which for this special purpose may be added some member of the Government not in the Cabinet, and after this revision they come back for final sanction. Later on, the budget proposals of the Chancellor of the Exchequer, at first perhaps discussed with the Prime Minister and the Leader of the House of Commons and then circulated, are formally considered at a Cabinet Council. The Cabinet is thus like a Court of Directors under the leadership of a chairman, each with a department of his own, yet acquainted with the principal business transacted in the other departments, and all meeting together from time to time to receive reports, to deliberate, and to determine the course of business to be followed. Each brings to the performance of his work not only his own abilities, but the accumulated knowledge and suggestions of his permanent officers, whilst they all live in the common atmosphere of Parliament, and in this way are made hourly familiar with the conditions which must influence if they do not govern their action.

Judicial Committee of Privy Council.

Another committee of the Privy Council is that called the Judicial Committee, which is practically a Court of Appeal from the Ecclesiastical Courts in England and from the Courts in the colonies and depend-

encies of the Crown. The work of this committee necessarily ranges over the most extended and dissimilar systems of law. Its composition may be said to be still in a state of transition. When the judicature Act of 1875 was passed it was intended that the Committee and the House of Lords should be united into one Supreme Court of Appeal, and when this scheme was modified, as elsewhere noted, it was provided that the Lord Chancellor and the four Lords of Appeal, whose appointment was then arranged for, should serve as paid members of the Judicial Committee. Since then three colonial Chief Justices have been added to the Committee and have occasionally served, whilst any Privy Councillors who have had judicial experience are qualified to sit, and in the ecclesiastical appeals it is required that at least three episcopal assessors shall attend the hearing. It may be added that all these appeals are made in point of form to the Sovereign, who refers them to the Committee for advice, and the answer given may express no more than the judgment of the majority.

CHAPTER XIII

ARMY: NAVY: CIVIL SERVICE

Army: War Office

Dependence of Army and Navy on Parliament.

IT results from what has been already said, that the Army and Navy have become strictly the creatures of Parliament. They are designated indeed the military and naval forces of the Crown, and are organised under the supreme headship of the Crown. Men are recruited and officers are commissioned in the service of the Crown; but in this, as in every other connection, the Crown stands forth as the impersonation of the realm; and the action of the Crown is supported, not to say directed, by the advice of Ministers. The Army and Navy exist to protect the nation, and to fulfil the policy which may be determined upon by Ministers possessing the confidence of Parliament. All this is attested by the subordination of the military arm to the Secretary of State for War, and of the Navy to the First Lord of the Admiralty; and, as if to emphasise the civil supremacy, both the War Secretary and the First Lord are almost invariably civilians. There can be no question indeed as to the supremacy of the civil power. This is secured in the first place by the dependence of both services upon Parliament for the votes which sustain the cost of their existence.

Unless the House of Commons renewed annually its fitting appropriation, the Army and Navy would soon cease to be. This is not all. Soldiers have been known to serve though irregularly paid, and even for a limited time without any pay at all; but there remains in the United Kingdom another safeguard against the continued coherence of an armed force which has not received the sanction of Parliament. The discipline of the Army depends upon a special code of military law, and this code is made applicable from year to year for twelve months only, so that unless its force is renewed by an annual Act before the expiry of each term the bonds of law keeping the Army together as an organised force would be dissolved. These principles are not indeed always brought into notice. Long periods may pass without any formal recognition; but the secret of the silence respecting them is that they are enthroned in the order of the nation like natural forces in the order of the world. No one thinks of the possibility — it is beyond imagination — of any part of the national force being employed in opposition to what may be ordered by the Government of the day, that is to say by Ministers of the Crown receiving their mandate from Parliament and the nation.

Development of Parliamentary control.

The situation thus stated has been gradually developed since the great Revolution of 1688. Up to that time Parliament refused to recognise a standing army in time of peace, and no law had been enacted for the government of such an institution. In time of war the prerogative of the Crown was construed to extend to the publication of 'Articles of War' governing the

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military forces in the field. The necessity of a standing army was soon recognised under William and Mary; and a statute, limited however to less than a year, was passed for its regulation. Even this was not renewed with perfect regularity, and the special law was allowed to lapse altogether for three or four years at the close of the seventeenth century when domestic and foreign peace seemed to be assured. On the accession of the Hanoverian dynasty the statute was revived and completely established as the Mutiny Act; and as such renewed from year to year with modifications and additions down to 1879. It contained a code of law for the government of the Army in peace at home, soon supplemented by a power it conferred on the Crown to issue Articles of War for the regulation of the Army throughout the King's dominions; the prerogative power of the Crown in time of war not being dealt with till 1803, after which date the Mutiny Act covered this prerogative also.

Forces voted for one year only.

The last great change was effected in 1879. In that year all the provisions governing the military forces, whether contained in the Mutiny Act or in Articles authorised by that recurring statute, were collected together in one Act of Parliament which may be described as the military code; and this Act has ever since been applied, sometimes indeed with modifications and additions, by a short annual Act to the number of the forces annually authorised. Without therefore going through the labour of revising every clause of the code afresh, Parliament retains complete command over it, for without a renewed sanction in reference to defined numbers its force would expire.

Functions of the War Secretary.

The civil head of the military organisation of the kingdom is the Secretary of State for War. As a separate office this is a comparatively recent creation. Up to and during the earlier years of the Crimean War, the Secretary of State for the Colonies[1] was also the War Minister. The experiences of that war compelled a separation of functions and the appointment of a new Secretary of State. The War Secretary has under him all the staff necessary to direct and register the movement of troops, distribution of pay, and the provision of supplies; and it is his duty to select and recommend the fittest persons for high appointments whether under the organisation of peace or for service in the field. As the special agent of the resolutions of his colleagues and himself in the Cabinet, he organises expeditions and sees generally to the execution of the military policy of the Government.

Council of National Defence.

Quite recently indeed the War Secretary has been assisted by a sub-committee of the Cabinet, to which has been given the name of the Council of National Defence, consisting of himself, the First Lord of the Admiralty, the Foreign Minister, and two or three other colleagues, whose duty it is to bring the forces of the Crown into correlation with one another and to assist the Cabinet in forming its decisions on all questions involving warlike operations. This Council is however rather an aid to the Cabinet than to the War Minister, who remains charged with all the executive functions of his office. For their due performance he is in constant communication with the Commander-in-

Commander-in-Chief.

[1] This was created as a separate office in 1801, before which the Colonial administration was under the Home Secretary.

Chief and other heads of the working army. He interferes in no way with the discipline of the service, and when the Army is engaged in warlike operations, the actual conduct of affairs in the field is necessarily left to the Generals appointed for the purpose, though the aims of their action are directed by him, and he regularly receives reports of what they are doing. The military organisation of the Army underwent its last great change subsequently to 1870, after Europe had watched the experiences of the Franco-German War. As now organised, the mass of the rank and file is enlisted for a term of seven years' active service followed by five years in the reserve; the period of seven years being liable to the addition of a year, if at the end of it the soldier is on foreign service. The Army Service Corps enlist however for only three years' active service and nine years in the reserve; while the Guards have the option of enlisting according to either system, and may pass from the three years' to seven years' active service. About one-third of the Army habitually serves in India, where its whole cost (including a charge in respect of previous expenses of recruiting, drilling, etc.) is defrayed by the Indian Government.

Terms of service.

Rank and File.

The distinguishing characteristic of the British Army is that it rests upon a basis of voluntary enlistment. Men satisfying prescribed limits of age and stature are invited to enter the service, and the recruit fulfilling the necessary conditions binds himself to serve for a term of years which, as has been said, differs according to the corps he joins. The fighting force is divided into regiments of cavalry and infantry and batteries of artillery, and the recruit enters into one

of these divisions. Promotion to the position of a non-commissioned officer is always open to him; but the commissioned officers form a separate order into which an occasional private may enter as the reward of special and distinguished merit. The mass of officers in the cavalry and infantry obtain their commissions as the prizes of competitive examinations which are open to candidates satisfying prescribed conditions; whilst engineers and artillery officers are trained in a special school into which cadets enter as the result of other competitive examinations. A limitation of a very effective kind is placed on the supply of candidates for commissions in the Army by the fact that the ordinary pay in the lower ranks is quite insufficient to meet the inevitable expenses of the officer, the disproportion varying with the different arms. Each regiment and battalion has its special officers advancing from grade to grade to colonel; and these again are combined in brigades and divisions, under generals of different grades. The whole of the fighting force is brought together under the Commander-in-Chief and his chief assistants — the Adjutant-General and Quarter-master-General — and the Commander-in-Chief is responsible to the Secretary of State for all promotions. In this he is assisted by a board comprising the heads of departments, and furnished with confidential reports concerning the qualifications of every officer; and officers who do not within prescribed limits of time pass from any one grade to that next above it are forced to retire on defined money terms.

Commissioned Officers.

Promotion.

The forces of the regular army are supplemented by those of the Militia and of the Volunteers. The

Militia.

Militia was originally a strictly local force organised under the authority of the Lord Lieutenant in each county; but it is now wholly directed and controlled by the Secretary of State, and differs from the regular army in that the men enlist for six years only, are called out for drilling for a limited period in each year, and are not liable for service outside the United Kingdom. The enlistment for the Militia is in fact voluntary, but an unused statutory power exists for supplying deficiencies in voluntary enlistment by a ballot. The Militia is now officered on the same principles as the Army, but the position is less burdensome and more accessible, and facilities are given for the passage into the Army of Militia officers of approved service. It constantly happens in time of war that Militia regiments volunteer for garrison duty outside the United Kingdom, and they do in fact often furnish large drafts to the army in the field.

Yeomanry and Volunteers.

Other auxiliary forces are the Yeomanry, a local cavalry of from 10,000 to 12,000 men, and the Volunteers, numbering some 250,000, who, as their name implies, offer themselves for drill and service. They were originally self-supporting; but they now receive allowances in money and outfit which have been gradually extended. In ordinary circumstances volunteers satisfy certain conditions of drill and efficiency, and after a varying number of years of service retire as voluntarily as they enter; but they are liable under stress of apprehended invasion to be called out, and to be kept serving till the danger passes away; and at such a time, as also when associated with the regular forces for training, are subjected to military law. The

war now (1900) in progress has been characterised by the formation of several special corps of volunteers who have come forward to offer their services during the contest, and have passed with the more permanently organised military forces to the campaign in South Africa.[1]

Navy: Admiralty

The civil administration which governs the Navy presents at first sight a different appearance from that governing the Army, since a Board of Admiralty takes the place of the War Secretary. The Board consists of four Lords appointed to execute the functions of the Lord High Admiral, an office which has been in abeyance for nearly two centuries with the exception of a short interval in 1827–28; but the First Lord is pre-eminent among these, and his political position is now almost identical with that of the War Secretary. He is always a member of the Cabinet, and the policy and great movements of the Navy being determined upon by himself and his colleagues, he becomes the agent of the Cabinet in carrying out their decisions. He has at his right hand a First Naval Lord who is always an admiral of experience and authority, but he remains supreme as well over the general service of the Fleet as over appointments and promotions. The fourth Lord assists him in Parliament under the title of Civil Lord, whilst the Secretary of the Admiralty, holding

Board of Admiralty.

[1] No attempt has been made to describe the territorial organisation of the Army or the way in which regulars, militia, and volunteers are associated together for the development of the efficiency of their several services, as these are matters lying outside of the constitutional relation of the Army to the nation.

technically a position subordinate to that of the Lords other than the First, but in reality of greater parliamentary authority, also assists the First Lord in the discharge of his parliamentary duties. When, as has happened more often than not, the First Lord is a peer, the Secretary takes the lead as responsible Minister in the House of Commons, and, having the conduct of the estimates for the Navy, occupies a position of considerable importance. Other branches of the naval service are under the direction of chiefs not sitting in Parliament, who work in constant co-operation with the First Lord, upon whom rests the full responsibility of the department. Technically the status of the First Lord is below that of a Secretary of State, but it is believed that no trace of this subordination is now found existing in practice, and the First Lord is in the same relation to his colleagues in the Cabinet in respect to the Navy as the War Secretary in respect to the Army.

Personnel: Officers;

The men who serve in the Navy are like those in the Army divided into two classes, commissioned officers and the ranks; and it is most rare for any one to pass from the latter to the former. The supply of officers is drawn from youngsters who are allowed by the First Lord to compete for entrance to a naval college, where they are educated and trained and whence they are ultimately sent afloat. They are promoted from step to step as in the Army, and in a similar way are forced to retire if, at defined periods, they do not rise from one grade to another. It should be observed that the pay of naval officers is not so disproportionate to the necessary or standard scale of expenditure as in the Army, and it may be added that ambitious and active officers

specially qualifying themselves in navigation, gunnery, torpedo-work, etc., may obtain relative appointments carrying with them additional rates of pay, in which cases an officer finds himself at a comparatively early age with an income adequate to his expenditure. Besides the naval officers thus described there are chaplains, medical officers, engineer officers, paymasters, and clerical assistants entering their several services on special conditions and generally after qualifying examinations, and in the case of engineers after special training in a college at Keyham.

Ordinary Seamen.

'Rankers' are obtained by the admission of boys of fifteen years to training ships along the coast, where they receive education civil and naval, and whence they pass afloat under an obligation of service for ten years from eighteen to twenty-eight. On the expiry of this term a bluejacket can quit the service, or he can and generally does re-enter for another term of ten years, after which he retires with a pension unless he has become a petty officer or a warrant officer, in which case his service is extended and his retiring pension increases. Besides the seamen thus obtained, there are civilians amongst the ships' crews entering as adults as stokers, carpenters, etc., constituting a separate class though subjected to the same discipline; and there is also the force of Marines, which in fact is organised like the Army and under the military code in the earlier stages ashore, but coming under a naval discipline when sent afloat. The naval code under which discipline is maintained in the fleet, and when necessary courts-martial held, is found in an Act passed in the year 1866; and it must be added that it is not

necessary as in the Army to apply this Act annually to the personnel of the Navy, the members of which remain continuously subject to its provisions without a special renewal.

Civil Service

Ministers and their permanent assistants.

Every Minister of the Crown has a separate department with separate duties, but he is assisted in the discharge of his special functions by an organised body of servants whom he finds at work when he enters upon his office, and most of whom will in all probability be left remaining at the work after he has resigned his post. These men, with stores of personal and inherited experience, maintain the traditions of their several departments, and are of the greatest help both in knowledge and in suggestion to their political chiefs. The latter may be quite new to the special work to which they are allotted, and they must needs depend upon those who are familiar with it. But at the same time the statesman brings into his bureau something of the activity and power of the outer world, and at the lowest he should save his subordinates from lapsing into that worship of routine, and from that setting up of the persons who serve above the aims to be served, which are the besetting sins of office. The Minister and his subordinates, working together and correcting one another, generally succeed in maintaining a high standard of prompt and efficient service.

Security of office.

Permanency of position is the rule of the Civil Service, and is generally accepted as a condition and as a guarantee of its high character. Every civil servant is secure in his office during his good behaviour, at least

up to the age (sixty-five) when the rule of the service requires him to retire. This security has indeed a tendency to diminish the energy and vivacity of work, especially if promotion is allowed to depend upon years of service with little attention to the character of the work performed; but apart from the recognition of merit, which is not wanting, zeal of office may generally be trusted. One of the difficulties in the organisation of the departments is that in most of them there is a great deal of work to do requiring no special qualifications beyond regularity and fidelity in routine. It is in view of this fact that two classes of clerks have been established, the Upper and the Second Division. Up to 1855 all clerks of every class owed their first appointments to favour, but in that year a new method was introduced which has since been extended till it is now practically universal. Under it, appointments to the Second Division are obtained through success in competitive examinations. Candidates between the ages of seventeen and twenty are invited once or twice a year to present themselves, and are examined in appointed subjects, the examinations being conducted by a special board called the Civil Service Commission. The successful candidates, due proof of character having been forthcoming, are drafted into offices as vacancies happen, and commence their career. The pay is such as to attract an ample number of candidates, who may not however always realise when entering the service its prospective limitations. A gradual increment of pay is ensured to all till it reaches £250 a year; beyond which 'duty' pay may be obtained in connection with certain special appointments; but these must

Second Division clerks.

be the reward of a minority, whilst promotion to another class is and must be rare. Below these there are copying clerks, recruited for temporary service, although their engagements are often renewed for long periods, whose pay is necessarily inferior and position less open to improvement; and from copying clerks and Second Division clerks complaints have from time to time arisen and must be expected to arise. Above the Second Division clerks are those of the Upper Division, now also universally appointed by open competition[1] after examinations of a severer character. These are men destined for higher duties requiring superior qualities of education and character. Their pay starts from a higher level and reaches by annual increments a higher standard, whilst they may be promoted from class to class within the division up to the top. There are however a few appointments — the very highest, such as Under Secretaryships — which may be filled, and not unfrequently are filled, by selection from without. Such an extended power of choice is useful in adding to the efficiency of an office, while the interest of the head of the office who makes the choice, in the capacity of his nominee, is so great that the risk of abuse of patronage disappears. In this way the permanent service of the department is built up, whilst it is crowned by the political personage who comes to it out of the struggles of public life, into which after a season he probably returns.

Upper Division clerks.

The postal service.

The description thus given applies to the departments of the Civil Service strictly so called. The departments connected with the collection of the revenue

[1] In the Foreign Office (see *post*) competition is limited.

differ somewhat in character, especially in the Post Office, which last require some special attention. The postal service is an example of the discharge by the Government of a large national business, the branches of which have of late years been extended by the carriage of parcels as well as of letters, by providing facilities for the transmission of money, by Post Office Savings Banks, and by the addition of the Telegraph Service. It is possible that after a time telephonic communications may be engrossed by the Post Office. They have been judicially declared to lie within the Post Office monopoly, and they are now conducted by other agencies on condition of paying royalties to the Post Office. Besides these extensions actual and potential of the Post Office itself, there are various proposals in the air for nationalising other services, in respect of which present experience may be a precedent. The Central Bureau of the Post Office is organised much on the same plan as the other departments already noticed, but it has under it in London alone a large number of collecting-houses, each with a staff and an army of sorters, distributors, and messengers; and the continual extension of country offices has developed a still vaster force of postmasters, clerks, and, at the base, of weekly wage-earners. It is obvious that competitive examinations could have little to do with entrance into such a system, and up to recently the smaller postmasterships in the country were absolutely in the gift of the local members of parliament supporting the political party in power, or if there was no such member, of some other person as nearly as possible corresponding to him in station and supporting the

Government. This last relic of patronage was abandoned in 1896, and all appointments to postmasterships and promotions are now made by the Postmaster General aided by the advice of the Surveyors of the several districts in which the kingdom is divided and by the credentials of past service. Appointments on the staff of the post offices are made in the same way, while entrance to the lowest grade of clerkships and the choice of subordinate and auxiliary letter-carriers is left to the local postmasters themselves, subject of course to dismissal by higher authority in case of incompetence or misconduct. The rates of pay vary from district to district according to the current local standards of wages, but are regulated from headquarters; and entrance on the staff, which carries with it a title to pension, is checked by the necessity of passing a qualifying examination under the Civil Service Commission. This system has been built up bit by bit as the circumstances of successive years suggested modification or addition, and the result is a great network of government employees pervading all parts of the United Kingdom. It would be hopeless to expect complete satisfaction with the conditions of service throughout such extended ranks, but the difficulties that have from time to time arisen have so far been fairly overtaken. They have not been made less by the fact that government placemen, who had up to 1868 been disqualified from voting at parliamentary elections, were in that year accorded equal political privileges with other citizens. There would be some delicacy in managing a trade organisation whose workmen had an important influence in electing the directors who fixed their wages. The influence of

Post Office officials, though widespread, is still slight in each constituency, especially compared with the influence exercised in those boroughs where government manufacturing establishments are centred. The members for 'dockyard' boroughs are habitually recognised in the House of Commons for their zeal on behalf of the dockyardsmen; and the reception of theories for nationalising services involving large local establishments must be qualified by this recollection.

CHAPTER XIV

ROYAL COMMISSIONS, ETC.

Function of Royal Commissions

REFERENCE has been made to the help and support Ministers of the Crown receive from the co-operation of a permanent Civil Service; and attention may now be drawn to another form of assistance enjoyed not merely by Ministers, but by Parliament and the nation at large in the acquisition and digestion of knowledge, and in the formation of opinion. Public questions may be debated by isolated thinkers or by the newspaper press, and in due course may become the objects of attention of special associations formed for the purpose; but it frequently happens that the time arrives when something more exact, more precise, and more authoritative is wanted than can be evolved through these comparatively irresponsible agencies. The matter may require a large knowledge of the details of existing business, or a power of severe analysis and reasoning not always the attribute of public life, or a collision of judgments approaching it from different quarters and holding as yet unreconciled views. In the solution of such difficulties recourse is had to a mixed body charged with the examination of the subject referred to them and the formation of conclusions relative to it. Such bodies are Committees or Commissions, and their ser-

vices have often proved of the greatest public advantage. They must be distinguished from Committees, whether separate or joint, of the two branches of the legislature, to which reference will be hereafter made, and which are generally appointed at later stages of an enquiry, or in cases where it is not thought necessary to resort to such bodies as are now in question. Extra-parliamentary examination may be conducted by a Departmental Committee, or by a Royal Commission. The former is inferior in dignity and authority, and is usually chosen to consider something of departmental or secondary importance. A Departmental Committee will ordinarily consist of some person or persons from the department in relation to which the enquiry arises, associated with other persons representing the interest or trade, or combinations primarily affected, and with other persons, some of parliamentary position recognised as possessing special knowledge or capacity or independence of judgment fitting them for the service. A Departmental Committee is appointed under a minute of a Minister desiring its assistance. A Royal Commission, as its name imports, is nominated by a commission from the Crown. It generally consists of parliamentary, official, and outside persons who from experience, training, general knowledge, and character, may be classed as experts in relation to the subject-matter of enquiry. Both Committees and Commissions conduct their work in the same way, and have the same powers. They cannot compel witnesses to attend or to give evidence when they do attend. Still less have they power to administer an oath. The cases however of reluctance to give evidence are rare, and may be said to be found

to be distinguished from Parliamentary Committees

and from Departmental Committees.

Composition and powers of Royal Commissions.

only on the part of bodies who apprehend their privileges are about to be attacked. It is within the discretion of the Commissioners whether evidence should be taken in public or in private, or again whether counsel should be allowed to be present as representing any interest concerned, and to take part in the proceedings whether by examination or cross-examination of witnesses. In the great majority of cases sittings are held in private, and even when they are public, professional assistance is rarely suggested and still more rarely allowed. After the reception of evidence has been completed, the Commissioners deliberate and draw up their report, and if they are not agreed, reports may be presented by a majority and by a minority. Even when one report has been agreed upon, qualifying remarks may be appended by single commissioners or by groups of commissioners. The report or reports with the minutes of evidence received are submitted to the Crown or Minister as the case may be, and are usually printed and circulated for the information of Parliament and the country. A report is not unusually a preparation for legislation upon the lines suggested by it, sometimes wholly in conformity with its recommendations. Illustrations of this work have now long abounded, but perhaps none can be found more remarkable than that of the Poor Law Commission of 1832, the result of whose labours was the absolute transformation in 1834 of the principles and methods of the relief of the poor throughout England and Wales. In addition to Commissions such as have been described, Parliament is sometimes assisted by others where what is wanted is an authority that can be trusted in relation to matters

Their reports

often a basis for legislation.

Standing Commissions.

about which the mind of Parliament is clear, but its own knowledge and capacity are recognised as limited. Bills for the amendment of special branches of the law such as the conveyance of real property have thus been drawn up by experts, and accepted by Parliament, on what has proved to be a well-founded faith in their guidance. Another Standing Commission has existed for many years for the purpose of clearing the Statute Book of obsolete and spent enactments, and though its recommendations are formally referred to a Joint-Committee of both Houses for examination before they are adopted, they are in fact approved on the authority of the Commission.[1]

[1] For Parliamentary Commissions see *post*, pp. 210 *seq.*

CHAPTER XV

THE PARTIES

How party government arises.

IF every act of the Crown must be supported by the responsibility of a Minister, and Ministers must possess the confidence of the House of Commons as the exponent of national judgment, it must be the continual care of Ministers to keep in agreement with that judgment. To the maintenance of this agreement their conduct must be habitually addressed. The result may be secured partly by studying the development of public opinion, and by shaping the course of the ministerial action, so as to move alongside of it, and partly by capturing and moulding that opinion, so that it shall support the actions of the Ministry; or both processes may be pursued together; the national judgment being now drawn after the Ministers of the Crown and the Ministers of the Crown now following the national judgment. The influences which move the swaying tides of opinion are not always the same. Sometimes a Ministry attracts support by fidelity to a particular body of policy which commends itself to the country. Sometimes its strength lies in the loyalty felt towards the character of its chief, not always its nominal head, who inspires trust and confidence as a leader and guide. Ministers supported by a majority of the House of Commons immediately after

a General Election are by hypothesis supported by the national judgment also. It must be their ambition to keep the House of Commons and the nation together, and if a divergence should appear to be threatening, it would seem to be more far-sighted to cultivate the power that must be supreme at the next General Election. Ministers cannot however always maintain this detachment of spirit. They may clearly see that opinion is for the time irreclaimably moving away from them, and while cherishing the hope that in later years it may again move towards them, they may be schooling themselves to give way to others when the nation has spoken. This change in succession of popular judgment must, to be effectual, involve the existence of other men prepared and ready to take office; and if the previous analysis of the working of the constitution be correct, such reserves must have been at hand more or less definitely organised ever since the responsibility of Ministers to the nation through Parliament was established.

Its continuance through many changes.

At a time when the House of Commons was in a predominant degree under the control of men of wealth, these reserves not unfrequently appeared as combinations of men brought together by family connections or accidental intimacy, rather than associations having, as the bond of union, agreement on a fixed set of principles of national policy and conduct. Yet even then the differences were often real, and men at least sought to distinguish themselves from one another by professions of divergent aims. Apart from family traditions or purely irresponsible ambition, men have always been and must be drawn into two camps of progress and of caution. The gradations of temperament must be infinite, and

the same man not seldom passes from phase to phase. Yet there are always two masses, the one characterised by attachment to things as they are and by hesitation to change; the other, by a strong sense of existing shortcomings and defects, and by a readiness to entertain plans for their amendment. Names change, but Whigs and Tories, Liberals and Conservatives, Radicals and Constitutionalists are only different ways of describing the same essential divisions. Adherence to things as they are may become less stubborn, the passion for reform less ardent, but the divergence of tendencies is never lost, though it may be less sharply manifested. Since the Reform Act of 1832 the line of demarcation has been repeatedly drawn afresh. Every change accomplished involves the assumption of new positions. Every new proposal of far-reaching change provokes a similar shifting. The objects of controversy are altered, the combatants pass to and fro, and still the two armies confront one another.

Groups within the parties.

It may even be said that year by year the two great divisions are more highly organised, and this development is not inconsistent with an organisation of subdivisions which, if not absolutely new, has of recent years been carried to an unprecedented length. There have always been groups within the two great parties. Before 1832 they were frequently distinguished as clustering about some particular person. A certain number of members might even be known as the men of a great borough-monger whose seats they occupied. In the years following 1832 the Whigs or Reformers had among their following Mr. O'Connell and his Repealers, the members of the Manchester School, and the Philo-

sophical Radicals, whilst the Conservative party of landowners, commercial magnates, and churchmen ran through all shades from High Toryism and unbending Protection to the open mind of Sir Robert Peel. The Maynooth grant and the demands of Repealers disturbed parties then as they are disturbed to-day, nor was there wanting a migration of leading spirits who, seceding from a Ministry, remained some time on its flank, and then became embodied in the opposite ranks. Subdivisions may have become somewhat more accentuated of recent years through the assumption of forms of organisation such as Church Committees, Service Committees, Labour Parties, etc., which meet more openly and with a greater affectation of independence than heretofore; but groups of a similar character have long been known and have perhaps exercised as much influence in the past as in the present on parliamentary life. All these sub-divisions are apt to disappear when the two great parties are set in array, nor can it be positively said, when the experience of to-day is compared with what we know of the experience of fifty or sixty years since, that the difficulty has seriously increased of marshalling the parliamentary hosts in conflict.

Present completeness of party organisation.

There can be no doubt as to the increased energy with which the two great parties are worked. The increase of railway and postal facilities, the comparative cheapness of paper and printing, the multiplication of newspapers, have all helped to develop this political activity. But it has been perhaps most stimulated by the multiplication of single-member seats of nearly equal size. The transformation of constituencies has greatly reduced

the intensity and power of personal and family influence, and has opened up fields where the greatest effect is produced by working through the forms of political organisation. Central offices are maintained in London, and local committees in almost every constituency are established, between which and the central offices there are frequent communications. Literature, or what passes as such, is thus disseminated, and it becomes more profuse as a General Election approaches. Meetings, or as they are more commonly called, mass-meetings, are held in and through the parliamentary vacation, with the exception of a few weeks after the usual August prorogation, and even in the session itself they are not unknown. To these meetings the leading political personages are drafted for the purpose of keeping up the fire of party zeal in every district. This unceasing and widespread activity is the newest development of party. Such men as the leaders of the House of Commons and of the Opposition might in a former generation deliver a couple of political addresses outside Parliament in the course of the year. The demands upon their energies have multiplied at least tenfold, whilst some members of the Government and of the Opposition find their main if not exclusive duty in urging upon provincial audiences the merits of their own party and the demerits of their opponents.

Defects of party organisation. Are they incurable?

The employment of the machinery thus kept in constant work cannot be said to be altogether free from evil effects. Many of them are incontestable, and a realisation of their number and weight has often led men to speculate whether the use of the machinery is on the whole productive of good or of evil, and whether, if it

could not absolutely be dispensed with, some readjustment might not be possible promising a diminution of the bad consequences that are only too flagrant. When these enquiries find a voice they are often met with the declaration that party government is indispensable, and must be taken with all its defects. Some intellectual energy may be necessary to imagine other modes of life than those in which we act, and there is a natural temptation on the part of the men who have been called to direct a great machine to decry suggestions for its transformation or abolition; but still discontent will recur, and the grounds of it must be examined. It is true that in a nation there must be forces of hesitation and of adventure; but corresponding moods exist in the breast of every man, and the effort of the individual is not to give way to alternate fits of inaction and of rashness, but to maintain an equable course of regulated labour. The aim of education is to substitute continuity for discontinuity, an uninterrupted flow for mere gush and check. If national life is so organised that its manifestations are habitually characterised by discontinuity in successive periods of time, we may suspect some defect in its organisation, even though we may not be able to see a way to its remedy. Such discontinuity does not in fact exist in real life, and it is noteworthy how habitually the conduct of the parties in power is shaped so as to correct the discontinuity which party organisation tends to produce. Every party in power leans in the direction of the policy of its opponents. A Conservative Government is Liberal, a Liberal Government is Conservative. It is a common experience for each in turn to be condemned by its extreme followers for adopting the policy

of its adversaries. The complaint is well-founded, and it shows that both Liberal and Conservative are conscious that the true line of national movement follows a course between their exclusive fields of policy. If it were possible to organise the representation of national life so that it should be habitually embodied in something reproducing this central line of movement we should be spared the falsity and the waste resulting from an organisation always producing more or less serious misrepresentations. Such a vision is at least conceivable. It must be made the subject of further enquiry before it can be declared to be in any degree practicable. Meantime it may be observed that, could it be realised, the Government of the future would have a promise of permanence and stability corresponding to the permanence and stability of the nation itself. It would be entitled to be called, what many governments vainly claim to be, national. It would from time to time part with some elements and receive others. As years went by it would be entirely renewed, but there would rarely be a break in the continuity of its existence. Such a transformation cannot be accomplished at a jump. Any steps towards it must be gradual. It is enough if the movement gives us a real promise of approach.

A suggested remedy.

CHAPTER XVI

GENERAL ELECTION

THE supreme importance of a General Election has been frequently stated. Its verdict upon the question immediately at issue is accepted by all as conclusive. Some controversy may indeed arise as to the range of questions so decided. First and most immediately important is whether the Ministers in office at the time of the election should be retained in power or dismissed from their places. This is tested by the balance in numbers of the members returned, whose disposition towards the existing government had been declared beforehand, and whose votes on this issue may be accounted as certain. The balance may however vary largely, and if it be small in number, the firmness of the position of the Ministers of the day cannot be reckoned as well assured. They may be safe against an immediate vote of want of confidence, but in the course of administration they may commit some act, or when they propose legislation to Parliament they may recommend some measure, either of which may be so displeasing to a fraction of their supporters as to turn the scale against them. In ordinary circumstances however the competitors for the support of the nation submit some definite claims for the support they desire,

The appeal to the Country.

and the verdict of the constituencies may be relied upon as determining not merely the question whether Ministers should be retained or dismissed, but also whether some prime object of policy recommended by them should be approved or condemned.

Main issue stated in election addresses.

There is generally no doubt as to what this paramount proposal is, although it may not be presented in the formal manner worthy of the occasion. Every candidate for the election issues an address to his own constituency containing, with more or less amplification, the grounds on which he makes his appeal; and the addresses of the leaders, who sit in the House of Commons, supply the main subjects of contention, with some indication of the order of their importance. These addresses are issued the moment the time of the General Election is determined, and the addresses of followers reproduce their leading features with the addition of declarations of loyalty to the party chief. Up to a comparatively recent time, the questions at issue were rarely expressed in a definite manner except in these addresses. The Tamworth manifesto was a letter of Sir Robert Peel to his constituents, and Lord John Russell in the same way wrote to the electors of the city of London. The members of the House of Lords watched elections in silence, and no attempt was made on the part of party conventions to draw up programmes of policy above or beside the action of the leaders of parties. Recently however Lord Salisbury, as Conservative leader, has issued an address to the nation at large, a precedent which may be said to have been set by Lord Beaconsfield in 1880, when he published an address in the shape of a letter to his Irish

Viceroy, the Duke of Marlborough; while Lord Rosebery, the Liberal leader in 1895, laid his views before the country through the medium of speeches delivered in London after a dissolution had been announced though before the necessary official steps had been taken.[1] Such appeals from peers may indeed be said to be novelties of form rather than of substance. The formation of party programmes and party conventions is quite new. The programmes thus put forth are not of the transcendent importance of the platforms formulated in the United States, when, on the eve of a Presidential Election, the delegates of the great political associations meet to draw up a declaration of policy, and to choose candidates for the presidency and vice-presidency. But they may be regarded as partaking in a minor degree of the same character. It is probable that in the course of time the proceedings in connection with these party conventions will be more formally regulated, but hitherto they have been rather loosely managed. The committees which exist in almost all constituencies are affiliated to a National Association, and they are invited to send delegates to the meetings of this association, one of which is held annually, while others are summoned for special occasions. The choice of delegates has not been closely watched, nor are credentials narrowly scrutinised. When the delegates meet a series of resolutions is generally submitted for their approval, and it has of late been found increasingly

Party conventions

[1] In 1900 Lord Salisbury followed the course he had pursued in 1895; and Lord Rosebery although no longer a titular leader addressed the country under cover of a letter to a political friend who was a candidate for Newcastle-on-Tyne.

difficult to move additions or amendments to them; and it may be assumed that at no time are any substantial alterations effected. When settled, these constitute a party programme, but they cannot as yet be regarded as of binding authority. Instances have been known where the most formal and practically unanimous resolutions of these conferences have been quietly set aside by party leaders. Up to the present date the determination of the issues to be immediately fought has been made by parliamentary chiefs, but these latter must at least listen to the resolutions passed by their followers, and on one or more critical occasions they have yielded to their wishes. The annual national gatherings of these associations are supplemented by provincial conferences of the same character; and it is out of this apparently confused medley of resolutions and addresses that the leading issues of a General Election are at last evolved. The date of an election is generally anticipated some time beforehand. The extreme life of a House of Commons is seven years, and as it is very inconvenient to enter upon a session which must be broken off before its normal work is accomplished, the House of Commons rarely passes beyond its sixth year. It may be dissolved at a much earlier date; but if so it is because some conflict has arisen requiring an appeal to the constituencies, and this seldom happens without sufficient signs of warning. A General Election is in fine an event for which preparations are commonly made. Candidates are sought for beforehand, and no constituency lacks them where the result of a contest is at all doubtful. Even where one party is so predominant as to make the issue certain, a candidate is often found willing to fight

have as yet no strict authority.

Selection of candidates.

a hopeless battle, partly by way of experience, and partly to make himself known so that he may be chosen for a better chance elsewhere on some subsequent opportunity. As in the great majority of cases there is one member to be elected, and the contest is a stand-up fight between two candidates, a choice of candidates is a matter of the utmost importance. The ideal candidate should keep together all fractions of the party he hopes to represent, and should have personal or political gifts effective to attract voters wavering uncertainly between the two great parties. As the constituencies of the kingdom are parcelled out, many exist in which the adherents of one party are so predominant that there is no contest, or no real contest, for the seat. Whole counties, or even larger contiguous areas, are thus found apparently of the same political complexion. In such cases the adherents of the minority, in the aggregate often very considerable, lose all organic connection with parliamentary life. Where the voters are more equally divided and contests are real, the result probably depends more upon the coherency of parties than on any other element of success. There is always a natural tendency to coherence. A fight brings out the combative qualities of man, and lukewarm politicians become partisan under the stress of a General Election. Great occasions, when great issues are fought, increase the power of this movement, and any candidate will serve who can be trusted to repeat the phrases of his party, and to follow its leaders in the enterprise on hand; though even then there will be groups of voters devoted to some particular aim and zealous to extort from the candidate a pledge in their favour. On occa-

sions when the main issues are less marked and less stirring such groups are more energetic in their requisition, and the quality of the candidate is shown in the success with which he handles them. Add to these considerations the fact that the candidate must generally be prepared to spend a sum of money which cannot be described as small. There is a limit to the permitted expense of a General Election varying with the size of the constituency, but the total remains large enough to lessen the number of available candidates, especially as the holding of the seat is necessarily attended with some annual charges. If a dweller in the constituency is possessed of adequate means, and is prepared to accept unhesitatingly the party programme, he has a fair chance of being accepted as a suitable candidate, because although he may excite some jealousies, neighbourly feelings may give him more supporters. It very often happens that no local candidate is forthcoming or that the local committees cannot agree upon one, and in these cases recourse is had to the central organisation, where a list is kept of men ambitious to enter the House of Commons and serve their party. Two or three names may be sent down. Possible candidates may themselves visit the local committees or a deputation may be sent up to London to interview them and make a provisional selection. In the end the man reckoned the most suitable is adopted as a candidate, and he issues his address. He may never have been heard of in the constituency before he was suggested as a candidate, but when adopted it becomes his business to make himself known by holding meetings, delivering speeches, answering questions, interviewing clubs and district

Expenses of candidates (see *note*, p. 178).

'Carpet-baggers.'

committees, and indeed seeking the acquaintance of as many individual electors of prominence as he can reach. His own action may be in some degree restricted by the legal limit of his expenditure; but friends can give their labours gratuitously to any extent, and it has been found possible for central associations to flood the constituency with pamphlets and leaflets, and even to be the means of introducing auxiliary speakers to win over by their arguments doubtful and neutral voters. This kind of help tends to develop what is already sufficiently apparent. It binds together all the contests in the several constituencies, so as to make them portions of one campaign between two opposing armies; and though here and there fights may be so disconnected from the general fray as to have characters of their own, these exceptions are too few to affect the meaning of the whole. Such at least is the case in Great Britain. In the greater part of Ireland General Elections have turned in recent years upon the one issue of parliamentary autonomy; and though the elections of the near future may show contests between different partisans of this autonomy, the issues fought in Ireland will still be foreign to the controversies of Great Britain, except so far as the latter are dominated by the same question of autonomy. For the present at least Ireland must be regarded as a backwater in the main current. In after years a unity of controversy may be re-established or established in the United Kingdom, and the characteristics of a General Election, that may now be noted in Great Britain, will, unless the methods of election are substantially changed, be then noted everywhere. What is to be observed is that by every step of preparation,

Party character of contest.

Result of this system

sions when the main issue [illegible] of the actual contest—stirring such groups are [illegible] has become a marshalling of the sition, and the quality of [illegible] two great parties into a hostile success with which he has [illegible] of light present any appear-

Expenses of candidates (see *note*, p. 178).

considerations the fact that [illegible] the purpose of deputing to the be prepared to spend a sum [illegible] who have succeeded in obtain-described as small. The [illegible] of the kingdom, the greatest expense of a General Election [illegible] their behalf; that those the constituency, but the [illegible] area are, as far as direct lessen the number of [illegible]: that those who obtain as the holding of the [illegible] to so under conditions giving some annual charges. [illegible] is anything more than a is possessed of adequate [illegible] preponderance of the hour accept unhesitatingly [illegible] Taking into consideration the fair chance of being [illegible] on the one hand and the because although he [illegible] representation on the other, the re-bourly feelings may [illegible] gives no promise that the often happens that [illegible] will be competent to deal with that the local committee must be developed as the days in these cases recommence pass by, and no surety that any tion, where a list [illegible] whether competent or not, pronounce House of Commons's decision that would be pronounced names may be sent [illegible] is indeed, as has already been selves visit the [illegible] majority that even on the prime issue sent up to London [illegible] the majority of the votes of per-visional selection [illegible] on the same side as the majority most suitable [illegible] by the electors: but there was at his address. [illegible] pronounced upon and decided within each constituency [illegible] it may be said that for working pur-but when adopted [illegible] of the constituencies is as good as a bal-self known [illegible] voters. But beyond that issue all is dark. answering [illegible] new question arises, and it may come very

'Carpet-baggers.'

and by every successive incident of the actual contest, a General Election has become a marshalling of the drilled forces of the two great parties into a hostile array whenever the chances of fight present any appearance of equality, for the purpose of deputing to the House of Commons men who have succeeded in obtaining, in the several divisions of the kingdom, the greatest demonstration of numbers on their behalf; that those who are outnumbered in every area are, as far as direct representation goes, voiceless; that those who obtain the privilege of a voice do so under conditions giving no assurance that the voice is anything more than a declaration of the numerical preponderance of the hour on the issue of the day. Taking into consideration the want of direct representation on the one hand and the uncertainty of direct representation on the other, the result of a General Election gives no promise that the aggregation of victors will be competent to deal with the new questions that must be developed as the days of the new Parliament pass by, and no surety that any decision they may, whether competent or not, pronounce will correspond to the decision that would be pronounced by the nation. There is indeed, as has already been pointed out, no certainty that even on the prime issue of a General Election the majority of the votes of persons elected will be on the same side as the majority of the votes given by the electors; but there was at least an issue pronounced upon and decided within each constituency, and it may be said that for working purposes a balance of the constituencies is as good as a balance of the electors. But beyond that issue all is dark. Whenever a new question arises, and it may come very

is to invalidate the representative character of Parliament.

quickly, it cannot be said with certainty that the votes of members correspond either to what the constituencies would say, if appealed to again, or what the nation would say, if appealed to as a whole. The result of a General Election is universally accepted as the sense of the country, the voice of the people, the expression of the national will; but an examination of its claims to these honours would seem to indicate the extreme insecurity of the title.

Need of a practical remedy.

An examination of the working of the constitution may exhibit some serious defects in it, but practical men will insist on the inutility of such an analysis if unaccompanied by any suggestions of amendment capable of being adopted. It is quite true that the decision of a freshly-elected House of Commons may not be the decision that a plebiscite would give, but some decision is wanted, and how can we get a better than the one we use? It is quite true that the House of Commons cannot be regarded as the nation in miniature dealing with questions arising from day to day in the course of its history. There is no pretence that it is a distillation of national wisdom, a presentment of national judgment. It is a rough-and-ready collection of men of affairs chosen by people at large as sufficiently competent, or at all events the best they can get, and if there is any lack in their preparation for grappling with new questions, are not their possible defects supplied by an abundant literature, the writers of which are always furnished with the knowledge and the power required for their discussion? This defence of things as they are is intelligible if amendment is difficult; it is conclusive if amendment

is impossible; but it cannot be adopted without serious enquiry into the feasibility of proposals of change.

Hare's scheme of representation.

The late Mr. Hare conceived a plan for making the House of Commons an absolute representation of the electorate of the kingdom, and his scheme received the enthusiastic approval of Mr. John Stuart Mill, who saw in it 'the greatest improvement of which the system of representative government is susceptible.'[1]

The idea of Mr. Hare was that if a certain definite number of electors agreed together to choose one representative, howsoever the electors were scattered throughout the kingdom, the man agreed upon would be an elected member of the House of Commons. It is unnecessary to explain the machinery devised for carrying out the idea; but the result if achieved would be that every member would be representative of a definite number of voters, and the members taken all together would exhaust, or nearly exhaust, all the voters of the kingdom. The House of Commons so elected would be a real microcosm of the nation, and the fraction of voters left over would be relatively minute. The nation at large would be thinking and acting in the House of Commons. All the elements of life in the one would be found in the other, and might be trusted to deal with new circumstances arising in the course of its existence much as the nation would deal with them; whilst the members, though thus accurately representative, would have a singular independence individually, since their titles would rest on the support of an aliquot part of all the voters of the nation, and men of honest and courageous con-

[1] J. S. Mill's *Autobiography*, p. 258.

duct would have some faith in the continuance of this kind of support. However attractive this scheme may be to those who have mastered its meaning and working, it must be admitted that it is too revolutionary in principle and too intricate in machinery to be treated as within the range of possible adoption. Those who are at the head of, if they do not control, political life as it is now organised, cannot regard with favour what would deprive them of much of their authority; whilst more imaginative and intellectual energy than can be attributed to the mass of men is necessary for that adequate understanding of the scheme as a whole which must precede consideration of its adoption.

A suggested modification of it.

It may be doubted whether any one conversant with the circumstances of political life ever regarded Mr. Hare's scheme as feasible as a whole. Even Mr. Mill must be taken to have looked upon it as an ideal, towards the fulfilment of which slow and distant approaches might be made. It is not a practical proposal to fuse all the constituencies into one, but it is open to discussion whether some five or six constituencies contiguous to one another might not be coalesced so as to obtain within their united area a representation of all the elements of political life working in it. If for example Manchester were treated as one constituency with five members instead of being sub-divided in five constituencies with a member apiece, it would not be difficult to introduce into it a mode of voting securing the result that the five members should represent all that is politically active and vivid in Manchester. Manchester would send itself to the

House of Commons. The different classes and the different interests, local and national, predominant within it, would have voices. It has been shown by practical experiment that the machinery could be worked without difficulty, and the result, whatever its worth, attained. What could be done for Manchester could be done for other great crowded centres of population. The application within such limited areas of a method of securing the total representation of their electors cannot be condemned as impracticable, whatever other objections may be raised against it. The first perhaps would be that this method of representation, if applied at all, must be applied universally. The whole country should be parcelled out into constituencies admitting the application of the principle. This does not seem necessary or even expedient. If the places in which it is proposed to introduce the new method be so chosen as not to involve any great result of party advantage or disadvantage, there is no reason why a partial application should not be made, so that its working might be tested, before it was carried further. Nor would it be difficult to constitute such new constituencies with from three to seven members as not to involve the hazard of great party changes. The present political representation of London, and of the greater centres of population, is so varied, as to present from this point of view no difficulty in forming aggregations that would be admissible. As the division of parties would be represented with fair accuracy in the membership of each multiple constituency, the division would remain fairly accurately represented in the aggregation of members of all together. There

would in fact be no great party balance, and if therefore the system were applied to combinations which do not at present as a whole show a great party balance, the party result of the change might be neglected. What is important is, that instead of having so many members on each side, so bound and tied, so labelled and ticketed, so numbered as to be commonly mere pawns for the players, there would be sent to the House of Commons so many active and independent embodiments of the active and independent voters who chose them. The managers of party might feel dismayed at the prospect of such unmanageable elements. It cannot be denied that their task would be more difficult than it is now. One of the main purposes for considering the proposal is the increase of independent thought in the House of Commons, and the advantages and disadvantages of this result must be taken together. The drawbacks of the composition of the House of Commons as it is, must be compared with the drawbacks as it would be. It is not however believed that the difficulty of conducting business in the House of Commons would be seriously increased. The new freedom would bring a new sense of responsibility, and an appreciation of the conditions of practical life would remain a law among the members of the Legislature. The truth cannot however be ascertained without experiment, and it is admitted that whilst in the United Kingdom as elsewhere the defects of the existing parliamentary representation are recognised, and there are some mutterings that parliamentary government is breaking down, there is as yet little active disposition to con-

sider proposals of change even of a limited and experimental character, nor can any change be anticipated till a deeper sense of existing defects has grown up, and perhaps until trials elsewhere indicate a way of escaping from them.[1]

Examples of its adoption in Tasmania.

This principle of election has however been put into operation in Tasmania, in the representation of its chief towns, Hobart Town and Launceston, in the House of Assembly; and the experiment seems to have been so much approved that a Bill has been introduced and has passed the House of Representatives, for extending the

Practical working of the proposed scheme.

[1] The scheme glanced at in the text is that of introducing into constituencies returning from three to seven numbers the single transferable vote known as Mr. Hare's system. Under it, each voter going to the polling booth receives a paper with the names of candidates printed upon it, and puts the figure 1 against the candidate most to his liking, adding if so disposed the figure 2 to his second choice, the figure 3 to his third choice, and so on through the list, as far as he chooses to go. This is all the work required of the voter. At the close of the election the returning officer and his assistants will determine from the number of votes given and the number of candidates to be elected how many votes a candidate must have to be successful. Suppose 4000 to be this number. The votes are then sorted in heaps; each heap consisting of the papers on which a particular candidate has 1 marked against his name. Thus there will be a heap for Jones, another for Smith, another for Brown, and so on for every candidate who has got any papers marked 1, and if any of these heaps contain more than 4000, the man to whom it belongs is elected; since 4000 have declared their preference for him. A number of papers over 4000, not being wanted by the elected candidate, is taken by chance from his heap and distributed among those who are marked 2 on them. This may secure the election of another candidate, and the same process of distributing surpluses is repeated as long as there are any surpluses to distribute. If when that is reached all the candidates are not elected, that one of the remaining heaps which contains the least number of papers is taken (the candidate to which that heap belongs being treated as out of the running) and its papers are distributed according to the next preferences recorded on them, and this process is repeated until all the candidates are elected.

method throughout the colony by dividing up the rest of it into multiple constituencies. If the Council passes this Bill, and it becomes law, Tasmania will have furnished an example of the process which has been suggested as applicable in some future day to the United Kingdom.[1]

Swiss and Belgian method.

The single transferable vote or Hare's plan is that which has received most attention in England; but another method of securing Proportional Representation has found more favour on the Continent. It was first adopted in Ticino, and the example was speedily followed in several other Swiss cantons. Still more recently the same method has been adopted in Belgium, and a General Election has been held on the new plan. Under this system any party may put forward a list of its candidates, and the voter gives his vote for the list he prefers. If for example Antwerp were the constituency, the Clerical party, the Liberal party, the Labour party, and perhaps other parties, put forward their lists. When the poll is closed the Returning Officer, knowing the number of votes given and the number of votes for each list, would declare a number of candidates elected from each list proportional to the number of votes given for it. The question remains how the candidates are to be taken from each list. This is sometimes provided for by allowing the party putting forth the list to arrange the candidates upon it in the order they may prefer, and the selected candidates are in this case those at the top of the list. In other cases it is provided that the voter may not only vote for the list, but may indicate the particular person on the list whom he prefers, and the selec-

[1] The Bill has since passed.

tion of successful candidates is then made in accordance with the preferences shown by the electors themselves. In Switzerland, where political life is very active, this method in one or other of its forms seems to have given great satisfaction, as has been testified by its rapid spread from canton to canton, and the result of the experiment in Belgium has apparently been received with equal satisfaction there. As lists may be put forth indefinitely this scheme gives great freedom of choice. But the single transferable vote appears to have secured still greater individual freedom, and in considering the respective claims of the single transferable vote and the list system, we have to set off the alleged greater freedom of the first against the alleged greater simplicity of working of the second.

Note on the expenses of candidates and members, see p. 168. — In some cases constituents subscribe to defray part or even the whole of the election expenses of a candidate, and trade organisations and other bodies specially interested in a member representing their views may provide an income for him whilst serving as member.

CHAPTER XVII

COURSE OF BUSINESS IN PARLIAMENT

THE ordinary session of Parliament may now be regarded as fixed to begin early in February and to end in the middle of August. At the commencement of the century and down to 1832 it was customary to assemble Parliament a few weeks before Christmas, and the session was then closed about the 4th of June (the birthday of George III.). Suggestions have, from time to time, been made for a recurrence to this period, and a motion in favour of such a change was carried by Sir George Trevelyan in 1890; but whatever the inconveniences attaching to a session beginning in February and lasting through the summer to mid-August, the balance of considerations seems on the whole to support it, and the motion in favour of a change has not been followed up. An examination of the machinery of our financial system will show that it practically determines the period of the session. Before however entering on a review of the ordinary course, it may be well to note the characteristics of extraordinary sessions. Of these the most important is the first session of a new parliament. A dissolution frequently interrupts the business of the year before it is completed, and it is necessary to call the new parliament together to complete the inter-

Session of Parliament: its ordinary period.

Extraordinary sessions; (1) after a dissolution to complete the year's work

rupted work. A dissolution may produce a change of Ministers, and in this case it is convenient to summon Parliament, if only to provide for the issue of writs to fill up vacancies caused by acceptance of office. In any case a Speaker must be chosen by the new House of Commons, though this of itself is not a sufficient reason for a session. It may now be taken as settled practice that a Speaker shall be re-elected who has proved himself competent for the post. It is understood that in some self-governing colonies a new choice for the Speakership is made at the commencement of every parliament; but in the United Kingdom the member chosen becomes at once outside party, and he is habitually re-elected. Speakers have happily been so chosen that no question of unfitness for re-election has been suggested for long years past. It is said that, at the commencement of the parliament of 1874, Mr. Disraeli had in his mind to set aside Mr. Brand, who had been chosen Speaker in the last parliament under the influence of Mr. Gladstone, and to support the election of another member; but he met with opposition within his own party, and the idea was abandoned. The present Speaker, Mr. Gully, was first elected in 1895, shortly before the dissolution of that year, when Sir Matthew White-Ridley was nominated in opposition to him. This was the first contest for the Speakership since 1835, and as the majority was not large, and the approaching dissolution was expected to change the balance of parties in the House of Commons, it was asserted with some appearance of authority that the choice would not be regarded as binding by the new House. In the event, there was an unparalleled overturn of parties, but if the intention

and to elect a Speaker;

to set aside Mr. Gully was ever seriously entertained, it was again abandoned. This experience has established more strongly than ever the principle that a member once Speaker should remain Speaker as long as he is fit for the office. It will be observed that expressions have been used implying that the Speaker is the choice of the Ministers of the Crown. This is indeed the fact, though Ministers naturally have regard in this as in all other questions to the feelings and opinions of their friends; and the mere acts of proposing and seconding the candidates are ostentatiously left to private members. The Speaker-elect is presented at the bar of the House of Lords for the approval of the Crown; but this is as pure a formality as the Royal Assent to a Bill that has passed both Houses.

(2) to meet unforeseen expenditure;

Besides the session at the commencement of a new parliament another kind of extraordinary session must be noticed. The House of Commons votes in the course of its regular annual sitting supplies to support the ordinary cost of government for twelve months, and if any new and unexpected cause of expenditure of a grave character arises, it is necessary to summon Parliament for fresh supplies. The breaking out of a war compels this action. It is the prerogative of the Crown to declare war, but war cannot be sustained without fresh grants of money, and Parliament is therefore assembled, and the House of Commons invited to vote additional supplies.[1] Another extraordinary

[1] A short session of this character was necessitated by the South African War in the autumn of 1899, more than thirty years having elapsed since the holding of a similar session; and a similar session was held in 1900, as the same war had involved greater expenditure than had been provided for.

(3) on the demise of the Crown.

session — something of a survival — is that held immediately on the demise of the Crown, when members meet and swear allegiance to the new sovereign.

A normal session. Queen's Speech and the Address.

We may now return to consider the course of a normal session. It is opened with a Speech from the Throne, under cover of which the Ministers of the Crown glance at foreign and colonial relations, briefly note any national events of transcendent importance, enumerate the chief proposals of legislation intended to be recommended by them, and invite the House of Commons to vote the supplies submitted as necessary for the services of the country. The Royal Speech is in fact a declaration of ministerial policy, and it becomes at once a subject of debate. An address of reply is formally moved, which at one time thanked the sovereign *seriatim* for every sentence in the Speech, but since 1890 has been made a simple dutiful acknowledgment. This abbreviated Address admits however as wide a range of discussion as the fuller reply. It has been already pointed out that Ministers of the Crown, although defeated at an Election, formerly used to wait for an amendment to the Address before resigning, and that this happened again in 1892. The amendments now ordinarily moved do not look to such serious consequences. They are submitted as texts for the discussion of questions that might not otherwise come under debate, and as other opportunities have become fewer there has been a tendency on the part of private members to make more use of this first opening. The prolongation of debates on the Address is attended with some inconveniences, and whenever the course of business in the House of Commons is again seriously

reviewed, this will require attention. The dominant fact to be borne in mind is that the financial year ends on the 31st of March. It has been already explained that money voted for a particular year and unspent, lapses, and is not carried forward to the new year; also that before any money can be issued for public services, the supplies must be voted and money granted to meet them, and the whole embodied in a Bill passed by Parliament. It follows that much work must be done between the opening of the session and the 31st of March.

Estimates. Votes on account.

As soon as the Address is agreed upon, the estimates for the coming year are laid upon the table, and the House of Commons is asked to sanction one or two votes for the Army sufficient to meet military expenditure for two or three months, similar votes for the Navy, and a vote on account for the Civil Services sanctioning advances to the separate departments sufficient to enable them to carry on for about four months. All votes are passed in Committee of the whole House, where members have the privilege of speaking more than once on the same question, and before the Army or the Navy votes can thus be considered in Committee, general debates on the Army and Navy respectively take place in the House itself on motions that the Speaker do leave the chair; and it is not obvious why, in principle, there should not be a similar debate before a vote on account is sanctioned for the Civil Services. The foundation of the proceeding is the old maxim that a discussion of grievances precedes Supply, and this would seem to require a general debate before the Vote on Account; but in fact this general debate is postponed until the Civil

Service votes come to be discussed and voted separately. It is perhaps a sufficient explanation of the apparent anomaly that there is quite enough work to do as it is, for indeed the statement of the financial business to be transacted before the 31st of March is not yet fully given.

Supplementary estimates.

This additional financial business is that of sanctioning supplementary estimates for the year drawing to a close. It has been already mentioned that if any grave cause of additional expenditure arose in the course of the year, such as that due to a war, Parliament would be called together to approve of it; but minor occasions of outlay continually arise not foreseen when the estimates were originally framed, and for such additions under the name 'Supplementary Estimates' the sanction of Parliament is asked between February and March. A little reflection will show how the several branches of financial organisation and the sitting of Parliament hang together. Whatever be the end of the financial year, Parliament must meet before it is reached in order to complete the service of the expiring year and to provide for the new, and again before Parliament meets all the Estimates for the several departments must be drawn up and revised; and it is in the interests of economy that the settlement of these Estimates should be as little distant as possible from the time to which they refer. If Estimates are drawn up long in advance, it is inevitable that wider margins must be allowed for possible contingencies. Once more, economy is secured by the passing of all these Estimates under one control before they are submitted to Parliament; and it is plain that that control must be that of the department which has to provide the money

to meet the proposed expenditure. The outcome is that throughout the several departments, when they set to work after the autumnal holidays, there is a preparation of estimates which are sent on to the Treasury, so that with the 1st of January they may be in process of revision so as to be ready for the forthcoming session. The estimates for the Army and Navy are not examined in the same detail by the Treasury, but they too must be made ready, and must be accepted by the Chancellor of the Exchequer as the basis of his calculations and of his provision for the coming year.

No vote moved except by a Minister.

In the fashion thus described, the whole financial organisation of the country, so far at least as expenditure is concerned, is drawn by convergent lines under the scrutiny and control of the House of Commons; and in this connection it need only be added that no vote of money and no addition to any vote can be proposed except by Ministers of the Crown. This is under a Standing Order of the House of Commons which the House might of course alter or revoke, but it is rightly regarded as a most valuable safeguard against irregularities, and there is no danger of its being abrogated, although individual members often evade it by proposing a diminution in a vote, when they have argued that it is insufficient, and they really desire to augment it. The House of Commons when seriously and deliberately bent upon it can effectually procure increased expenditure; and Chancellors of the Exchequer often complain that the House stimulates extravagance and is indifferent to economy, but the rule disabling private members from proposing votes or additions to votes is a security against casual irresponsible action which would be con-

demned by many too indolent to be always at hand to oppose it.

The Budget.

It may here be noted that the Chancellor of the Exchequer generally opens his Budget soon after the commencement of the new financial year.[1] Early in April he reviews the income and expenditure of the year that has just run out, comparing the results with those of the preceding twelve months and also with the anticipations which were put forward in the last Budget. He takes the opportunity to draw attention to the course of commerce and industry in the same period, and he is naturally led to notice the state of the public debt as left at the end of the transactions of the year. He then passes to the Estimates of expenditure for the new year already laid before the House and the Estimates of revenue as they would accrue from existing taxes, and if the comparison of revenue and expenditure shows a surplus or a deficit, he has to propose means of distributing what is not wanted, or of raising what is required. At one time it was supposed to be his duty to underestimate income and to overestimate expenditure so as to be certain of a surplus after meeting his way; but whilst he is always bound to be cautious, any tendency to wilful error would now be condemned, and is not to be suspected.

The financial work that must be done between the opening of the session and the 1st of April has been

[1] When however large additional taxation is imminent and increases of Customs and Excise duties are known to be inevitable, a Chancellor of the Exchequer may be forced to anticipate the ordinary period of his Budget so as to prevent the loss of revenue which would be experienced through the clearances of commodities out of bond under the lower duties. This occurred in March 1900.

stated, and some note has been taken of the Budget of the Chancellor of the Exchequer. Incidentally it has appeared that the Government has to obtain in the rest of the session the sanction of the House of Commons to the several votes of the Army and the Navy and the Civil Service, and to pass through Parliament such Bills as, in its judgment, are demanded for the public welfare. Parliament has however other functions besides that of examining and approving the proposals of the Ministers of the Crown. It contains an organised Opposition whose first duty may be to criticise ministerial action, but which must have some more or less definite policy of its own. Its members may be trusted to use every opportunity of explaining their policy so as to attract the approval of the nation. And besides the organised Opposition there are private members with views and projects which have not yet received formal adoption by any party, and which their authors are all the more ready on that account to press upon public attention. The prime difficulties of the House of Commons are to estimate at their proper value these several branches of work, and to allocate the time of the session in due proportion to each. It is not unnatural that the Ministers of the Crown should continually seek more time for the work they recommend, all of which is undoubtedly important, and much inevitable; and it is also to be expected that the leaders of the Opposition, many of whom have been Ministers, would not very strenuously resist the demands of the Government for additional time. It is however confessed that in generations before our own, private members have done work of incalculable benefit to the country in advocat-

Other work of Parliament.

The Opposition.

Private members.

Important part played by them.

ing reforms, in the extension of franchises, the liberation of commerce, the amendment of the criminal law, and the removal of religious disabilities, which would have made slower progress but for their energy; and it betrays some simplicity of mind to repeat, what is sometimes heard, that all far-reaching reforms are exhausted, and nothing now remains for the private member to undertake that could be put in comparison with the triumphs of the past. It is more probable that private members have for a time fallen below their predecessors than that the field for their action is exhausted. It may be taken as certain that if Parliament, especially in the House of Commons, fulfilled its claim to be the Grand Inquest of the nation instead of an array of rival partisans, there would be a great revival in the variety and interest of subjects submitted for debate. It cannot be said indeed that there is now any lack of legislative projects. At the commencement of the session a crowd of members contend for the privilege of introducing Bills, and there are bitter complaints that the allocation of time for them is insufficient, and that what is given is squandered and wasted through the operation of ill-conceived rules.

Allocation of time of Parliament.

As at present arranged the sittings of the House of Commons are limited to Monday, Tuesday, Thursday, and Friday, from 3 to 12, after which unopposed business may be taken till 1.0,[1] and Wednesday afternoon from 12 to 5.30, after which unopposed business may be taken till 6.0. Of these sittings Monday, Thursday,

[1] A single opponent suffices, and sittings after 12.0 rarely last ten minutes. The twelve o'clock rule may be suspended, if notice is given beforehand.

and Friday are absolutely appropriated to the work of the Government, and Tuesday and Wednesday are left for the use of private members, though their control of these days is often disturbed. It has been seen that a large mass of important work, mainly financial, must be executed before the 31st of March, or even before an earlier date if Easter falls at the end of March; and if the debate on the Address is prolonged, the remaining Government days may be too few for the discharge of this inevitable business, in which case the Government comes applying for private members' days in motions that are equivalent to commands. In April the days of private members may be left undisturbed, but they are soon again broken in upon. It has been seen that the detailed examination of the separate votes of Supply is generally wholly left till after the 1st of April. For many years this work, which admits of a review of every branch of the administrative action of government in turn, was extremely ill done. In 1896 Mr. Balfour proposed a rule that twenty-two nights, which might be extended by motion to twenty-four, should be set apart for Supply, Friday being the night usually appropriated; and he left it largely to the discretion of the Opposition, or of groups of the Opposition, to say what particular votes should be taken. The rule was adopted, and has since been annually renewed, and in many ways it has worked extremely well. The nights for Supply and the votes to be taken are known beforehand, and the conduct of foreign or colonial affairs, of some, if not all, of the more important domestic departments, and Scotch and Irish administration, are reviewed in turn. There is a tendency requiring

Nights reserved for Supply.

is just possible that with the help of these Wednesdays one, or perhaps two, Bills may get through the House of Commons, and be sent to the Lords, too probably to come to an untimely end, though not for lack of time. It is perhaps a matter of wonder that a private member ever passes a Bill; and this indeed can only happen when the member has been very lucky at the ballot, and the Bill is such as to command an almost overwhelming measure of support.

Course of a Bill through Parliament.

References have been repeatedly made to the successive stages of a Bill on the assumption that they are generally known, but it may here be well to give them in detail. In the House of Commons a member gives notice that he proposes to introduce a Bill on a particular subject, and at the appointed time he makes his motion. This may be discussed and opposed; but except in connection with Bills of great importance introduced by Ministers of the Crown this first motion (called 'the first reading') passes with little or no debate and without a division.

First Reading.

Second Reading.

A day is then fixed for the second reading, before which the Bill is printed and circulated, and on which a debate on its principle is taken if it is opposed. If it passes this stage, it may be referred to a Select Committee, but this happens only when it is thought expedient that its provisions should be examined in detail, and evidence taken thereon if necessary, by a small number of members specially qualified to deal with them. The next stage after the Bill has been reported upon by a Select Committee or after the Second Reading, as the case may be, is a reference to a Committee of the whole House or to one of the two Grand Committees called respectively the Committees of Law and of Trade. These Commit-

Select Committee.

Grand Committee or Committee of the whole House.

tees consist of eighty members chosen so as to represent the House in miniature, to which fifteen other members are added in respect of each separate Bill; and it was intended when the Committees were first constituted that the Bills referred to them should be such as were not opposed in principle, though their provisions required careful and authoritative revision by a miniature House. It must be noted that in all Committees, whether engaged in examining Bills or in other work, a member may speak repeatedly to the same question. After a Bill has passed through either a Grand Committee or a Committee of the whole House, it is reported and considered in detail with the Speaker in the Chair, if any amendment has been made in progress through Committee. If no amendment has been made there is no Report stage, and the Third Reading is the next taken, after passing which the Bill is carried to the Lords. A Bill brought from the Lords proceeds at once to the second reading in the Commons, and a Bill brought from the Commons proceeds in the same way to the second reading in the Lords. A Bill originating in the Lords is presented by the lord who is sponsor for it; after which it proceeds to a second reading. Its subsequent progress was formerly exactly the same as the progress of a Bill in the House of Commons before the institution of Grand Committees; that is to say, with or without a reference to a Select Committee it passed through a Committee of the whole House, Report if an amendment had been made, and Third Reading. In the year 1888 however the Lords resolved upon introducing a change in their procedure, and they then had the intention of setting up several Standing Committees to which Bills should be referred

Report.

Third Reading.

Bill brought from Lords.

Committees of the Lords.

for better examination than seemed possible in a Committee of the whole House. This scheme was never wholly carried out, and so far as it has been adopted it has been modified in practice. One Standing Committee has been set up consisting of about a hundred members chosen by the Lord Chairman of Committees and eight other Lords associated with him to form a Committee of Selection. To the Standing Committee thus appointed every Bill is referred after having passed through a Committee of the whole House unless the House shall otherwise order, and it is perhaps noteworthy that the quorum of this Standing Committee is fixed at seven, the quorum of the House itself, as will be remembered, being no more than three. After consideration by the Standing Committee the Bill passes to the Report stage if amended, and if unamended goes directly to the third reading.

Exceptions to this order.

All the formalities of procedure in reference to Bills are within the control of the House through which the Bill is passing. Each House has exercised its discretion in varying them, and is doubtless competent to change them altogether. No radical alteration is indeed to be apprehended, but action is sometimes taken which must be noted. The House of Lords, recognising the limitation of its functions in respect of Appropriation Bills, ordinarily suspends all its Standing Orders after such a Bill has been read a second time, and passes the Bill through all its stages immediately. In the House of Commons in 1883, after a series of dynamite outrages, a Bill intended to protect the community against their repetition was passed through all its stages at the same sitting, after some demur as to the haste of the proceed-

ing, but without any division upon it. There may appear to be very little difference between passing a Bill through all its stages one after another, and abolishing several stages for that turn; but the sacred character of the steps in procedure is attested by the form in which they are set aside. Each House remains omnipotent, and must be trusted not to abuse its power.

Obstruction.

The ordinary formalities of legislative procedure in Parliament manifestly afford large opportunities of debate; and it cannot be surprising if in times of excitement, when measures in progress are strenuously opposed, the opportunities are in danger of being abused. Such an abuse is recognised by the name of obstruction; and it is almost always denounced, sometimes without reason, sometimes with very good reason, when resistance to the course of legislation is obstinate. It may be hazardous to attempt to define obstruction. When a project of legislation is brought forward with little or no forewarning, embodying perhaps a novel policy and containing provisions which have not undergone public discussion, and in reference to which the mind of the nation may be unenlightened and its judgment unknown, a repetition of hostile argument in debate after debate may be a public duty such as it is the especial function of an Opposition to discharge. But such debates easily pass beyond defensible limits especially in Committee, when the same member may make speech after speech. When the conduct of Opposition degenerates into a resolution to use all the forms and privileges of debate to prevent a Bill passing, not because it is new and strange and not understood or not approved by the nation, but simply because it

is disliked by those who are opposing it, the offence of obstruction is developed. Up to 1882 there was no parliamentary rule under which debates could be compelled to come to a conclusion. In that year the principle of 'Closure' was adopted in the House of Commons, and the rule now stands that if a question is under debate, and a member moves that it be put to a division, the Speaker, or in Committee the Chairman, can at his discretion put, or refuse to put, the motion; and if he puts it, and it is carried with one hundred persons told as voting for it, the question in debate is forthwith put and settled. The immediate obstacle is thus overcome; but the rule goes further. When a Bill is under discussion in Committee or on report, a motion can be made that certain words or that a clause stand part of the Bill, which motion, if accepted by the Speaker or Chairman and carried, may have the effect of overcoming several obstacles at once. Even this however is only slightly effectual when opposition is minute and prolonged, which may happen with or without justification. On three or four occasions recourse has been had to another and still more drastic method of procedure. In the case of the Crimes Act (Ireland) in 1887 the opposition was bitter and stubborn; and a motion was made and carried that, if the committee stage was not ended by a certain night, the remaining clauses should then be put from the chair without debate; and a similar procedure was employed at the close of the Report stage. These precedents were followed in the next parliament in 1893, when the Home Rule Bill was, to use the phrase of the day, 'guillotined,' as was also the Evicted Tenants (Ireland) Bill

Closure.

'Guillotine.'

in the year 1894. The procedure has thus been employed by both great political parties, but it is not the less deplorable. If habitually used it would mark the ruin of parliamentary methods; but it may be said with some truth that it has been an odious necessity provoked by reiterated discussions from which the parliamentary spirit had already vanished. Those who desire to see it fall into disuse must be zealous to co-operate in restraining the abuse of opposition on the one side and the passion of impatience on the other. At times when great constitutional questions are in agitation it may be difficult to restrain the licence of irresponsible followers; but those who have seen the violent expedients to whch excesses lead should be on the watch to check the unparliamentary spirit on its first manifestation.

Questions.

Another function of Parliament in relation to public affairs must be noted.[1] At the commencement of public business, questions may be addressed to Ministers seeking information with respect to the administration of their several departments. Argumentative questions are not permitted, nor is any discussion allowed to follow, but a Minister may be asked any question of fact touching his action or inaction, and such questions attest a constant vigilance which may check administrative error. They can be asked in both Houses, and in the Lords a question may be supported by a speech and followed by debate; but in the Lords questions are rare, whilst in the Commons they are habitually numerous, and have been known to exceed a hundred.

[1] The work of Parliament in respect of private bills will be reviewed in a subsequent chapter.

This species of control is often exercised in respect of very trifling matters, where a member unambitious of publicity could obtain his information by private enquiry; but the liberty of questioning a Minister is of great value as a safeguard against possible error.

Adjournment.

It has been said that discussion cannot follow a question; but in former years a member dissatisfied with the answer he received was at liberty to move the adjournment of the House, and upon this motion a discussion could ensue. This privilege was highly valued, and Mr. Bright is known to have said when it was in force that it should never be given up; but it is manifestly capable of being easily abused, and in 1882 a new rule was adopted regulating it, which rule however has itself been often abused. Under it a member can, when questions are over, ask the leave of the House to move its adjournment for the purpose of discussing a particular specified question of 'urgent public importance'; and if the House does not unanimously allow the motion, it can still be made, and discussion upon it follow, if forty members rise in their places to support the application. This species of interpellation sets aside the appointed business of the day as long as it lasts, and cases have not been infrequent where the necessary forty members have risen to support the application, and the majority of them have forthwith gone out, leaving the discussion of 'urgent public importance' to take its course. There is practically no means of testing the urgency or importance of a question beyond the adhesion of forty members, and amendment of the rule seems desirable though some power of interpellation is necessary. Its operation is at present

checked by a device still more irregular. If it is suspected that adjournment will be asked for in relation to a particular question, some member, who does not want it discussed at all, gives notice in anticipation that he will bring it on for discussion on a future day, and by virtue of such registered notice prevents its being brought on at once.

Petitions.

Some surprise may be felt that nothing has as yet been said of the ancient right of the people to petition Parliament. In former generations this was of great service, and its exercise occupied a considerable position in parliamentary business. Strict regulations were drawn up which are still maintained touching the form of drafting petitions; but in substance it was left free to any member to present any petition setting forth in becoming terms any public grievance and praying for some distinct remedy. This privilege remains intact, and it is still possible for a member presenting a petition to ask that it be read by the clerk at the table; but this is very rarely done, and if an attempt were made to use this process at all indiscriminately, it would not improbably be taken away. Formerly a member could at once draw attention to a petition thus presented and initiate a discussion upon it, and this is still within the practice of the House of Lords; but the absorption of parliamentary time to which reference has been already made has rendered it impossible in the Commons. The practice of petitioning has indeed become somewhat mechanical in the Lower House. The member presenting his petition writes his name across the top, gives an attendant a filled-up form naming the petitioners, and the prayer, and drops the peti-

tion silently into one of the bags hanging at the table for the purpose. A Committee of Petitions publishes every week a statement of petitions received, of the names of the members presenting them, and the numbers of signatures attached, and reprints in an appendix to the statement such petitions as appear to be typical or otherwise of special importance. From time to time, when some particular question stirs the public mind, petitions from every part of the country are poured in through members, such petitions being often stimulated by the urgency of a central association pressing its friends everywhere to unite in petitioning, and the number and weight of petitions so presented furnish arguments in subsequent debates. The development of public meetings, of newspapers, and of other vehicles for the manifestation of opinion has however greatly diminished the importance of petitions, which may be expected to continue to decline.

Summary and conclusion.

It may now be possible to conceive the action of Parliament, and more especially of the House of Commons, from day to day. Throughout the session questions are constantly addressed to Ministers respecting their administrative acts, and the Address in answer to the royal speech at the commencement gives an opportunity of formulating suggestions of policy. For a certain number of Tuesdays the opinion of the House may be taken on motions or subjects of public interest; and on a larger number of consecutive Wednesdays Bills may be submitted; though the choice of subjects of motions and of Bills is largely a matter of chance. The rest of the session is occupied by Government work such as the consideration of votes in Supply, the pro-

posals of the Budget, and projects of legislation, and there is a constant tendency on the part of Ministers to ask for and obtain additional time for their own work at the expense of private members. The Government, it must be remembered, is in office because it is supported by a majority of the House, and there is a presumption in favour of its getting what it wants. But it must be remembered also that every parliament comes to a certain end, that many members have hopes and plans for re-election, and that if the Government of the day does not feel sure of retaining its power through and after a General Election, it looks to the possibility of being brought back again into office at some later period. All the forces inside and outside Parliament thus tend to converge together to maintain it as a national resultant, *i.e.* as the living and moving expression of the national will; but its claim to high respect which this description involves is vitiated by the strict organisation of parties, which makes Parliament itself for the time being an engine for effecting the purposes of party. The questioning of Ministers, the submission of motions for discussion, the interpellations justified as of 'urgent public importance,' the detailed supervision of the action of every department presenting something of the characteristics of the diagnosis of an organism, the proposals of new laws removing old defects or providing for fresh needs — all combine to make up the presentment of a nation at work upon itself, moving and growing from phase to phase in the course of a natural development.

But the maintenance of this larger ideal, though never wholly lost, is too often obscured by the pursuit

of nearer and meaner issues. How far it can be upheld must depend largely upon the sense each member has that he is an elementary factor in the execution of the national purpose; but it must still more largely be affected by the appreciation of their powers and duties by the Ministers of the day whose animating spirit controls and directs the whole. As long as these last remember that they are something more than the occupants of offices which chance has brought them, which chance may take away and may again restore, that they are for the time the chief actors in a great history rooted in the past and with manifold promise in the future, the petty intrigues and transitory struggles of the hour cannot destroy that abounding life and power of Parliament which justifies its title to be regarded as the nation in action.

CHAPTER XVIII

PRIVATE BILL LEGISLATION

THE work of Parliament so far noticed has been entirely of general public interest; but a sphere of its action remains which is of great importance, though its range has been frequently narrowed. Application is made to Parliament by some private person or by a group of persons to obtain some privileges which it is alleged should be given in the public interest, or for relief from injustice in circumstances with which the Courts of Law are not competent to deal. Thus prior to 1857 a divorce *a vinculo matrimonii* could be obtained by persons domiciled in England only by an Act of Parliament; and domiciled Irishmen must still seek it in this way. Foreigners were generally naturalised by Act of Parliament before the Act of 1870 laid down the conditions under which certificates of naturalisation can be obtained from the Secretary of State. Persons interested as tenants for life or otherwise in family estates often sought leasing and selling powers from Parliament until the practice of conveyancing was so improved that such powers were commonly found in settlements, and still later under General Acts the Chancery division of the High Court was empowered to sanction the largest dealing with settled estates.

Former subjects of private legislation.

the strictness of a court of law. The report of the committee if adverse (when it is declared that the preamble is not proved) is final; and is commonly so when favourable, though in this case attempts are sometimes made at the next stage in the House itself to upset the decision of the responsible committee; attempts which are much discouraged by the House. The procedure in the House of Lords is practically the same as in the House of Commons, except that five lords constitute the committee, and that its members are got together by the Chairman of Committees instead of being nominated by a Committee of Selection. There are however variations in the practice of the House of Commons.

Procedure in Lords.

Police and Sanitary Committee.

An important class of Bills consists of those promoted by municipalities and other local authorities seeking larger powers of police and sanitary control; and it was found that, when such Bills were submitted to committees of four, great variations of decision followed. It was determined in 1882 to refer all such Bills to a special committee called the Police and Sanitary Committee in which continuity of service might secure continuity of procedure, and this Committee has ever since (except in 1883) been appointed and re-appointed by motion from the House itself. Again, it sometimes happens that applications for private Bills involve questions of public interest that cannot be adequately protected by the presence of the limited class of persons whose rights are so interfered with by the Bill as to give them a title to appear against it; and such Bills have been referred by the House to what is called a hybrid Committee with instructions to receive evidence and allow opposition from any quarter. A hybrid

Hybrid Committee.

Committee consists of an even number of persons chosen in the ordinary course by the Committee of Selection, and an uneven number added by the House, one of whom, being entirely disinterested, is chosen to be chairman, while the others are equally divided as promoters and opponents of the Bill.

Joint Committee.

All the proceedings so far spoken of are conducted separately before the two Houses, and it sometimes happens that the opposition which has failed in one House is successful in the second. Cases however occur from time to time, in which a hearing before a joint-committee of the two Houses is substituted for hearings before successive committees. These cases usually involve some very large questions of almost national importance, and the joint-committee is selected with extreme care, so that its decision, though practically final, is as authoritative as the repeated decision of the two committees; but saving this reference to a joint-committee the procedure in respect of second and third readings is conducted separately before each House as in ordinary cases. It will be seen that the necessity of applying to Parliament for Private Acts generally arises from the desire to expropriate land which can in no other way be satisfied. Whether the land be wanted by a public body for purely public purposes, or by an association of men engaged in an enterprise promising private advantage as well as public utility, the principle has been usually held sacred, that no one shall be obliged to sell his land except under the authority of an Act of Parliament. It was indeed set aside in 1883–85 in relation to Ireland, where the Privy Council was allowed by Parliament to authorise the

taking of lands for labourers' cottages and for light railways, and a departure from it seems to have been quietly sanctioned in a Scotch local Act; but it was not in any degree overruled in England till 1894, when, after a heated controversy, a compromise was agreed upon in the Local Government Act giving an order of the Local Government Board the force of an Act of Parliament for the taking of land for allotments. This Act of 1894 was promoted by a Liberal Government; but in 1896 a Conservative Administration bettered the precedent against which its leading members contended two years before. In that year the Light Railways Act was passed, under which a small Commission was appointed for the local examination of proposed schemes for subsidiary railways, and if the Commission reported favourably to the Board of Trade, that department, after giving opportunities to objectors to appear again before it, could sanction the scheme conferring all necessary powers for its execution without having recourse to Parliament.

Light Railways Act.

Difficulty of private legislation.

The experiment of the Light Railways Act appears to have worked satisfactorily, but it has not yet been extended in other directions. The hindrances to small local improvements and to the development of undertakings of public interest involved in the necessity of resorting to Parliament have long been felt. The process is difficult and uncertain, subject to all the chances of parliamentary sessions, and is withal very expensive. It would probably have long since been set aside, had it not been supplemented by the cheaper and easier method of provisional orders.

Still the complaints have not been appeased, espe-

cially from Scotland, where there has appeared to be a strong objection to the necessity of bringing applications and all the evidence in their support up to London. Many plans have been drawn up to meet these complaints, and in the last session (1899) an Act was passed providing local machinery for dealing with some Scottish Bills. The machinery was changed and again changed during the passing of the Bill; and in the end, although a local tribunal was established, there was added a provision for re-hearing cases before a joint-committee of Parliament, if objection was carried so far; and we must wait for some experience of the working of the Act before it can be said that it in any way fulfils the motives for passing it. Parliament may be led to relinquish the consideration of Bills involving the expropriation of land, as it has relinquished the consideration of other Bills, but at present it jealously guards this privilege, and plausibly objects to the appointment of a permanent tribunal to execute the work on the ground that its action would be stiff and legal and wanting in that flexibility which enables parliamentary committees to shape their decision in accordance with the changing circumstances of the time.

A remedy attempted in Scotland.

CHAPTER XIX

PARLIAMENTARY COMMISSIONS

Parliamentary Commissions have semi-independent executive or judicial functions.

IN the preceding chapter mention was made of the creation by Act of Parliament of a Commission charged with the duty of examining applications for making light railways. Upon this Commission is devolved what would otherwise be the direct work of Parliament, and if it approves of any scheme laid before it, its approval, subject to the sanction of the Board of Trade, has all the authority of an Act of Parliament. This is an example of a large class of Parliamentary Commissions, varying very much among themselves, but all possessing the characteristic that they are intended to be in some degree independent of direct parliamentary influence and direct parliamentary control. Their functions are sometimes executive, sometimes almost judicial, and sometimes have a mixed character combining several elements.

Executive Commissions: The Ecclesiastical Commission.

A conspicuous example of a purely executive Commission is found in the Ecclesiastical Commission. This was appointed in 1836 for the purpose of relieving the bishops and cathedral corporations of the management of their estates, paying them instead fixed annual stipends and appropriating the surplus revenue it received in the endowment of new sees designated by Parliament,

in the subdivision of large populous parishes, in the provision of funds to support the clergy of the new districts cut off, and in augmenting the stipends of those livings in public patronage where the population was considerable and the existing endowment fell below a certain moderate standard. The character of the work to be done by this Commission was defined by Parliament, and from time to time additions have been made to its labours; but the execution of its work was largely left to its own discretion, and it is so far independent of Parliament that the expenses are a charge on the revenue it administers, and do not come as a vote under the annual survey of the House of Commons. Its action might at any time be overhauled by Parliament, which called it into being and could put an end to its existence. But as no Minister sanctions its acts in detail, so no Minister is directly responsible in Parliament for them.

The Ecclesiastical Commission is permanent in character. Others have been appointed for a limited term of years to fulfil the intention of Parliament in matters which could not conveniently be entrusted to a department of the Civil Service. University Commissions have thus been charged with the partial re-organisation of the Universities and their Colleges, and in the fulfilment of these duties they have had to draw up new College or University statutes; but provision has been made that such statutes shall under certain conditions be laid before Parliament, where they may be annulled. This limited form of reserved control finds more extended use in connection with the Charity Commission with which the Endowed Schools Commission is now incorporated. The Charity Commission, like the Eccle-

University Commission.

Charity Commission.

siastical Commission, relieves Charity trustees of the management of their endowments, though only when these trustees so desire, and it has other functions of visitation and inspection and, subject to many limitations, of remodelling charitable trusts. The work of the Endowed Schools Commission, now, as has been said, part of the Charity Commission, is practically confined to the construction of new schemes for the management of endowed schools. But these powers and the other powers of remodelling trusts are subject to the proviso that schemes opposed by the persons interested in them must be laid before Parliament, where either House could set them aside. The Charity Commission indeed has never enjoyed the independence of the Ecclesiastical Commission. Its expenses are provided for by an annual vote of Parliament, and it works in connection with, if not absolutely in dependence upon, a branch of the Executive Government. Under an Act of last session (1899) the position of the Charity Commission was still further modified, and we may expect to see it soon become a sub-office of the Board of Education.

Parliament is jealous of such Commissions.

It must be admitted that though Parliament from time to time creates Commissions intended to be in some measure independent of itself, it is easily moved to interference by a certain jealousy of independence of the bodies thus created. The acts of such a Commission affect the interests or excite the feelings of individuals whose complaints find vent through the remonstrances of their representatives in the House of Commons. The conditional independence is resented, and then abridged, and by and by the Commission is absorbed in the ordinary administration. The carrying out of the Poor Law

reform was handed over to a Commission which, it was hoped, might have some independence; but in the nature of things this could not be. The work of the Commission was permanent; its cost was from the first a parliamentary charge, and it soon became a department represented by a responsible Minister in Parliament.

Some elements of a judicial character will have been observed in the functions of the Charity Commission and allied Commissions. They are found in greater prominence in the work of the Railway and Canal Commission established in 1873, though mixed with administrative duties. The primary purpose of this Commission was to secure to traders and the public those facilities which the legislature had designed should be given by Railway and Canal Companies, especially the former, but which through want of adequate expression, effective legislative provision, or the general complexity of the subject-matter, the Courts of Law were unable or ill-fitted to enforce. The securing of a through rate for goods, the prevention of unjust discrimination, the removal of impediments impairing or preventing the connection of services, the adjustment of working arrangements between railways themselves, are examples of the functions entrusted to this Commission; and though the direct operation of the Commission has apparently been small, and complaints have been raised of the inadequacy of its service, it is believed that it has been an efficient check upon neglect or abuses of powers that otherwise would have been suffered; and it may confidently be anticipated that the scope of its duties will be enlarged rather than diminished. Most of its work takes the form of trials publicly conducted between parties with witnesses

Railway and Canal Commission.

and counsel, and its decisions are given as legal judgments with a reasoned consideration of the facts and arguments submitted. Its expenses are charged upon annual votes, but any interference by Parliament is rather by way of support than of restriction.

Judicial Commissions: *e.g.* Election Commission.

There remain other Parliamentary Commissions created for purposes of investigation, strictly judicial in their character and attributes. It has been already noticed that the validity of returns of members to the House of Commons was at first determined by the House itself voting as a multitudinous court, but was subsequently delegated to small committees which were in fact Courts of Law giving final judgments. It was however difficult for these committees to make exhaustive examinations of electoral contests, and an Act was passed providing that where a committee reported that there was reason to believe that corrupt practices had generally prevailed at a particular election, a commission of qualified persons should immediately issue charged with full power of investigating the conduct of elections in the particular constituency, and armed for that purpose with authority to give complete immunity from prosecution of any witness incriminating himself in the frank confession of truth. These inquisitorial powers were often effective in revealing a state of corruption which the House of Commons punished by a temporary suspension of electoral privileges, and in more than one instance Parliament went further and disfranchised the borough whose electoral corruption had been exposed.[1]

[1] The principle of this legislation was followed in Canada in 1873 by the appointment of a Special Commission, headed by a Judge of

No Election Commission has been called into existence since the great redistribution of constituencies in 1884; but a Parliamentary Commission has been created in the interval which was the subject of much controversy. When the House of Commons thinks it expedient that a particular question should be investigated, its first impulse is to entrust the duty to a Committee of its own members, and this is specially the case when the matter to be investigated is the conduct of a member. On other subjects of difficulty, the instrument at hand may by common agreement be set aside, and it has already been explained how largely Royal Commissions are employed for purposes of enquiry. The investigation of the conduct of a member, especially if it affects his legislative character, rouses the jealousy of the House for exclusive possession of the enquiry. On the other hand, it must be remembered that a Committee of the House of Commons has no original power to take evidence on oath, and that however valuable a Committee may be as an instrument of investigation (upon which indeed some discredit has recently been thrown in the history of the South African Committee), the impartiality of its judgment, when considerations of party enter into the enquiry, cannot be highly rated. These were the matters that had to be weighed in 1888, when the conduct of Mr. Parnell and his associates was publicly arraigned. Charges of a very gross and sweeping kind were made against many Irish members and pre-eminently against Mr.

Parnell Commission

the High Court, for enquiry into alleged corrupt transactions involving the Prime Minister of the Dominion in connection with the recent General Election.

Parnell; and he claimed the appointment of a Committee of the House of Commons for the investigation of the charges against himself. The proper answer to this application probably was that the charges against him did not touch his conduct as a member. They were not such as, if proved, would have amounted to any breach of privilege on his part; and his true course was to cite his assailants to answer in an action in a Court of Law. This he declined to do, on the natural though insufficient ground that he could not hope to obtain a verdict from an English jury. Thereupon the Government of the day, having refused to assent to the nomination of a Committee, at first offered, and then insisted upon, the appointment of a special Commission composed of three judges of the High Court to investigate the whole body of accusations against Mr. Parnell and his associates. The result was eminently satisfactory in proving the excellence of the tribunal as an instrument for the investigation of truth. But looking back upon the history, the conclusion can scarcely be resisted that the proceeding was altogether uncalled-for and improper. If the charges had lain within the proper competency of a Select Committee, a tribunal of judges might have been invoked as a better instrument of investigation. But if, as appears to be the better opinion, they were not within that competence, they should have been left to the regular process of the Courts of Law at the instance of the aggrieved parties. It may be concluded that Parliament forgot to respect those limitations of its own power which must presently be noted as residing in the fundamental constitution of the country.

Part II

INSTITUTIONS SUBORDINATE TO PARLIAMENT

CHAPTER I

ENGLAND: JUDICIAL SYSTEM, CHURCH, LOCAL ORGANISATION, LANDLORDS

Judicial System

PARLIAMENT is the last and highest authority in the land, from whose laws there is no appeal; but even the action of Parliament is tempered by the existence of institutions, subject indeed to its control, but with which it is slow to interfere. Foremost among these is the organisation of the judiciary and the fundamental rules of the administration of the law, civil and criminal. The principle that a man cannot be convicted of a crime except by the unanimous verdict of twelve fellow-men is older than Parliament itself; and though it may be set aside locally or even generally in times of acute crisis, and minor offences with strictly limited punishment may be exempted from its operation; yet as if doubtful of its own power Parliament hesitates to touch it, and its sanctity is most jealously guarded.

Trial by jury.

The visitation of every county by the highest judges at least twice a year for the purpose of trying all prisoners in detention under a charge of crime is another safeguard of justice which could never be made less stringent. Two other guarantees of liberty having their origin in Common Law, though strengthened and secured by statute, should also be mentioned. The first is that

Arbitrary arrest.

the warrant for the arrest of any person must state on the face of it sufficient cause for arrest. The early Stuarts attempted to evade this obligation, but it was insisted upon in the Petition of Right and again reinforced by the Long Parliament. The second is the right of any one under detention or of any one on his behalf to apply to any superior judge for a writ of *Habeas Corpus* directing a jailer to bring up a prisoner and show sufficient cause for his detention, — a safeguard which we have seen was made most effective by the *Habeas Corpus* Act in 1679.

Habeas Corpus.

General warrants.

Yet another safeguard was vindicated by the courts of law without requiring statutory assistance in the early years of George III., when 'general warrants' for the arrest of persons unnamed though accused of definite offences were declared illegal.

Independence of judges secured.

These are examples of institutions not of parliamentary origin, though in some cases strengthened by parliamentary support. The security of judges in their office is no less sacred, and this is due to parliamentary action. Judges are officers of the Crown; so much so that originally their functions ceased on the death of the king, and they were long removable at the royal pleasure; but the great Act of Settlement of 1701 provided that they should be removable upon addresses from both Houses in favour of such removal; and their salaries are fixed, so that they are not subjected to the annual criticisms incident to votes in Supply. The immunity of judges almost tends to excess. A difficulty occasionally recurs, though at long intervals, when a judge becomes unfit and does not himself recognise the painful truth.

At the base of the judicial hierarchy in relation to

crime are the Justices of the Peace. When not justices or magistrates *ex officio* they are appointed for counties and for such boroughs as have separate Commissions of the Peace. They are appointed by the Lord Chancellor; but in the case of counties, usually though not necessarily, on the recommendation of the Lord Lieutenant. This official is generally some person of high standing in the county selected by the Crown practically for life, and his most important function is that of recommending fit persons to be magistrates. County magistrates not *ex officio* must possess a qualification of property. This is not required of Borough Magistrates. *Ex officio* justices or magistrates are, in counties, the chairmen of the County Councils and of District Councils; and in boroughs the Mayor, and an ex-Mayor for one year after ceasing to be Mayor.

The magistrates in Petty Sessions.

Any person seeing another committing a felony or one of the graver offences, or who, knowing such offence to have been committed, reasonably suspects another to have committed it, may and should arrest him on the spot; and policemen — constables or officers of the peace — have larger powers of summary arrest. But where the offence is not so grave or the necessity of arrest not urgent, a summons or warrant should be obtained from the magistrate, the first requiring the alleged offender to appear before him, the second directing an officer to arrest and bring him. Whatever the preliminary step may be the accused must be brought before two or more magistrates sitting in the court of the district of the offence, or Court of Petty Sessions; and the magistrates may in the case of defined light offences proceed to conviction, and sentence not exceeding six months' impris-

Law of arrest.

onment, and must in graver doubtful cases, unless satisfied there is no evidence to convict the prisoner, commit him for trial at Quarter Sessions or Assizes. In addition to the magistrates so described, there exist under statute in London and the largest boroughs stipendiary magistrates appointed by the Home Secretary at fixed salaries to be paid in the metropolis by the nation, elsewhere by the borough, each of whom is invested with the powers of two ordinary justices. Magistrates not *ex officio* may be struck off the Commission of the Peace by the Lord Chancellor, and the power is occasionally exercised. Next in rank above the magistrates sitting in Petty Sessions are the magistrates for the county, with one of them chosen by themselves presiding as chairman, assembled together in Quarter Sessions, and the Recorder of the borough, where such exists, also sitting in Quarter Sessions. These can hear appeals against convictions in the inferior sessions, and they also try, with the assistance of a jury, such prisoners as have been committed for trial before them; and from the decisions of such courts appeals may be carried on points of law, though not on questions of fact, to the High Court of Justice.

Stipendiary magistrates.

Quarter Sessions.

Another most ancient method of conducting enquiries into the gravest crimes is that of the Coroner's court. Coroners are as a rule county officers, serving for a district of a county, and until recently were elected by the freeholders of the district without regard to the value of their holdings; but they are now appointed by the County Councils. Their tenure is for life; but they are removable by the Lord Chancellor for inability or misbehaviour, and a similar power is vested in any Court before which a coroner may be convicted of misconduct in his office.

Coroner's inquest.

The duty of a coroner in case of any violent or sudden death, or death in prison, within his district is to summon a jury and to examine witnesses as to the cause of the death; and, if the result of the examination is a verdict by the jury charging any person or persons with the murder or manslaughter of the deceased, the coroner issues his writ for the arrest of the person so charged and he is brought up upon it at the next assizes. This process, though of great antiquity and of undoubted utility in the investigation of the causes of violent or sudden death, does not interfere with the procedure before magistrates in petty sessions already explained, and is indeed frequently held concurrently with it. Boroughs with quarter sessions also possess coroners by virtue of ancient charters. These officers are appointed by the borough council, and their duties are similar to those of the county coroner.

County Courts the basis of civil justice.

The judges of County Courts may be said to be at the base of the civil administration of justice, though their jurisdiction is strictly concurrent with that of the judges of the High Court. These are of comparatively modern origin; County Courts having been created in 1846 to facilitate the recovery of small debts, displacing many petty local courts existing by charter which had mostly become quite inefficient. These courts are competent to try claims up to £50, and by consent to higher sums. They have also a jurisdiction of administration in Equity and in Bankruptcy up to £500. Judges of County Courts are appointed by the Lord Chancellor, and must be barristers of ten years' standing, and they are removable by him 'for cause assigned,' though it is believed that this power

has not been exercised in more than one or two cases. These judges ordinarily sit without jury, though either plaintiff or defendant can claim a jury (limited to five) in cases involving more than £5. Where the sum exceeds £20, or by leave of the judge for smaller sums, appeals may be carried, on a point of law, to the High Court; but they are excessively rare in proportion to the cases tried. The most serious fact connected with these courts is the exercise by the judges of their power of committal for contempt. It is most common for a debtor to be ordered to pay his debt by instalments; but the order, whether for immediate or deferred payment, is too often disobeyed, and judges feel themselves compelled to commit the debtor to prison for contempt. The use of this power is obviously a matter of discretion, and the discretion may be abused; but as yet no attempt has been made to regulate the power, although attention has from time to time been directed to the subject.

High Court. Queen's Bench Division.

Above the courts of civil and criminal jurisdiction thus noticed the High Court discharges its functions. This consists of three divisions, and for the moment attention may be directed to the Common Law division. At its head is the Lord Chief Justice, who is associated with fourteen other judges. From this division the judges are sent in pairs to try civil and criminal cases at the Assizes already referred to in each county; and such Assizes are held at least twice a year for civil and four times a year for criminal cases. The judges of the division also try cases of an original character in London; and two of the judges are from time to time associated together and form a divisional court which hears appeals

from inferior courts and applications for a new trial, which may in fact be appeals from other judges of the court acting singly.

Probate, Divorce, and Admiralty Division.

Side by side with the Queen's Bench Division rank the other divisions of the High Court. The first to be noticed, because the simplest, is the Probate, Divorce, and Admiralty Division. This division has succeeded to the jurisdiction of courts originally ecclesiastical. The recognition of wills, the administration in simplest form of the estates of intestates, the allowance of divorce, and the settlement of claims originating in the high seas were matters unknown to the Common Law, and were first noticed and cared for by the courts of Bishops. Not till 1857 did the last vestige of this peculiar origin disappear, when the Divorce Court was set up with full powers to grant divorces *a vinculo matrimonii;* and the existing division of the High Court, consisting of a President and another judge, has succeeded to these powers and to the full jurisdiction of the Admiralty Court.

Chancery Division.

The third or Chancery Division of the High Court consists of the Lord Chancellor and six judges. The jurisdiction of the Court of Chancery early arose to supplement the deficiencies and correct the injustice of a limited and rigid Common Law. Its history down to the time of the Reformation illustrated the larger and more equitable temper of ecclesiastics; and the laymen who, with one exception, subsequently presided over the court continued to apply equitable principles in correction of the Common Law even down into this century, when the judicial development of the new jurisprudence became complete. The court gave relief

Equity and Common Law, formerly separated,

from penalties, the exaction of which would be unjust; set aside agreements made fraudulently or at variance with the true meaning of the parties; prevented the abuse of powers beyond the true limit of their intention; and enforced the performance of trusts which the Common Law, refusing to recognise, left to the uncontrolled discretion of the trustee. The delays of the Court of Chancery became a byword; but the stubbornness of the Common Law judges in maintaining the narrowest interpretation of their own maxims and principles made its interference indispensable, if the law of the country was to grow with the wants and expand with the equity of the nation. The full attainment of justice required however the co-operation of two sets of courts. The Court of Chancery restrained suitors from enforcing their rights in the Common Law courts when their enforcement would be inequitable; but on the other hand sent issues of facts to be tried by Common Law judges and juries; and it was not until 1875 that the courts were fused into one, every judge having the same power and administering the same principles. The Divisions now existing are maintained with relation to the kind of business transacted in them, the simpler and directer issues being tried in the Common Law Division; the more complicated and interwoven relations being investigated, adjudicated upon, and administered in the Chancery Division; but each judge may move from one to the other; and wherever he sits he applies the same law though the procedure may be different.

became fused in 1875.

Above the High Court thus constituted in its three divisions is found the Court of Appeal, of which the Lord Chancellor, the Lord Chief Justice, the Master of

Court of Appeal.

the Rolls, and President of the Probate Division are *ex officio* members, the other members being the five Lords Justices. This Appeal Court generally sits in two divisions with three judges in each — the Master of the Rolls and the five Lords Justices being the members ordinarily acting — and from it cases may be carried to the House of Lords, or rather the Committee bearing that name, which has already been described as a final Court of Appeal.

Choice of judges.

The choice of members of the High Court other than the Lord Chief Justice, and of the Lords Justices of Appeal, is the peculiar function of the Lord Chancellor; but it may be possible that, in the fulfilment of this duty, the Lord Chancellor sometimes consults his more exclusively political colleague, the Prime Minister, just as the latter may consult the Lord Chancellor respecting such appointments as that of the Lord Chief Justice, the Lords of Appeal, and the Master of the Rolls, which lie within his power of recommendation to the Crown. The exact apportionment of the measure of influence in every appointment may be difficult; but in respect of ordinary members of the High Court, the discretion of the Lord Chancellor is believed to be untrammelled; although it was said, a generation since, when a late Lord Chancellor retired, that one element conducing to it was his refusal to appoint as judge a less worthy person pressed on him by the Prime Minister. It has been already explained that all these judges hold office during good behaviour, and are removable on an address to the Crown from both Houses of Parliament praying for a removal;[1] and

[1] In fact the judges have come to be regarded as removable only if such an address is presented; and it is so expressly declared in the latest colonial constitutions.

that for a further security their salaries are charged on the Consolidated Fund.

Barristers and solicitors.

This view of the organisation of the Courts of Law is scarcely complete without some reference to the persons who are permitted to act as representatives of parties to processes civil or criminal within them. These are of two classes, barristers and solicitors. The first have exclusive audience before the superior judges and generally in Quarter Sessions; they have now the fullest authority to examine and cross-examine witnesses, and address the Court or jury, and generally to do everything which a client could wish to do for himself. The second are the agents for parties in the several stages of procedure preliminary to and attendant upon an audience in court. Solicitors, called also attorneys, have to fulfil a certain apprenticeship and pass sundry examinations before being admitted to act: and they can be and are discharged from their functions by the judges if shown to be guilty of misconduct in their profession. Barristers are admitted to their position by four societies of great antiquity which, like so many mediæval guilds, prescribe conditions of fitness for professional status and see that they are fulfilled. They exercise also the right of disqualifying ('disbarring') any one who has proved unfit to continue to act. Any one disbarred may indeed appeal to the judges against the sentence of the society disbarring him; and those who are 'called to the bar' are formally presented to judges after being called, though it is not known that the judges have any power to refuse to recognise any one so called.

The Church

The legislative privileges of bishops.

In the earlier history of England the organisation of the Church was the most powerful of all checks on the authority of the King and of Parliament. Judges could be removed at the royal pleasure, and if removed fell into the ranks of ordinary life; but no bishop could be deprived of his episcopal authority, and interference with him in the enjoyment of his temporal possessions was not lightly ventured upon. There was an outside power which might be provoked to some terrible action, and the excommunication of a king by a bishop might be followed by the interdict of a kingdom by a pope. All this has long since passed away. In the present working of the constitution the most important factor connected with the Church is the presence of two archbishops and twenty-four bishops in the House of Lords.[1] These would form a large proportion of the active forces of that assembly if they were themselves active in it; and in matters specially affecting their own opinions they often turn the scales and indeed keep the scales turned; but in the general work of Parliament they are not prominent. The nomination to vacant bishoprics is made by the Crown on the advice of the Prime Minister; but as has been intimated elsewhere it may occasionally happen that the favour of the Sovereign has more influence in such appointments than is common in relation to offices of State. Deaneries and a large number of canonries are filled upon the

[1] Dioceses have of late been subdivided so that there are now more than twenty-four bishops, but the number entitled to sit in the House of Lords has not been increased.

nomination of the Crown by the advice of the Prime Minister, and a large number of livings as well as some canonries are in the gift of the Lord Chancellor; but, while appointments are thus made by and with the advice of the most eminent officers of State, the persons appointed have no especial political privilege or function.

The Ecclesiastical Parish.

For the rest the whole kingdom may be said to be divided into parishes, the rector or vicar of each being a corporation with a certain endowment. But except in relation to these endowments these clergymen do not differ from ordinary citizens, having now no special civil right even within their parishes. It is their exclusive right to conduct religious worship in their several churches; but the churchyards are open under regulations to burials by others; and since 1894 they are no longer *ex officio* chairmen of parish vestries for civil business. The aggregation of parishes into rural deaneries, and of rural deaneries into archdeaconries, are matters of no political bearing. When we pass from archdeaconries to bishoprics, we are again in touch with a personage who has prospectively if not immediately special political power.

Convocation.

Dioceses again are united into the two provinces of Canterbury and York, each with a Convocation of its own. These are quasi-ecclesiastical Parliaments of two Houses, the Upper consisting of the bishops of the province, and the Lower of the very imperfectly organised representation of the clergy. In 1852 these Convocations, which are elected under royal authority, were permitted for the first time since 1717 to meet together for discussion; since which they have met in annual sessions. Houses of Laymen were constituted by vol-

untary association in 1886 and have since held sittings simultaneously with the Convocations to which they are attached. In 1898 a new departure was taken when the two Convocations, without any royal mandate, met together in plenary assembly; but these meetings whether convened by royal writ or otherwise may properly be described as of purely domestic interest, and their conclusions have no authority save *in foro conscientiæ*.[1] Of late years most, if not all, of the bishops have held annually in their dioceses, conferences called Synods of their clergy and of elected laymen; and a Church Congress has met annually at some centre chosen for the purpose — the Synods in Congress being occupied with discussions on matters of ecclesiastical interest. Of these several gatherings it may be said even more emphatically than of the provincial convocations, that they have no coercive authority. They are valued as illustrations of the life in and of a society which in time past was co-extensive with the nation, but now forms an undefined and even undefinable portion of it. They are rudimentary attempts at organisation wanting in legal validity.

Voluntary associations; — Diocesan Synods. Church Congress.

This position has been recently illustrated in another way. In 1897 Parliament passed an Act for the distribution, in aid of voluntary schools, of certain sums to be annually voted, and authorised the Education Department to hand over, to such associations of voluntary schools as it might approve, the aggregate sum due to

School Associations.

[1] At the close of the session in 1900 a Bill was introduced in the House of Commons for the reform of Convocation and the legal organisation of Houses of Laymen, and generally for the development of the functions of these bodies, with a reservation however of the authority of Parliament over their acts and conclusions.

such schools, to be distributed among them at the discretion of the several associations. Diocesan and archdiaconal associations of Anglican schools were quickly formed, and have received and distributed the sums allotted to them; but the Wesleyan Methodists and the Roman Catholics have also formed associations which have become intermediaries distributing the monies accruing to their schools under the Act of Parliament. All the associations so formed enjoy, for the time being, the recognition of the Education Department; but they are all voluntary in character and no one of them is really different from the rest.

Church law. Another important fact must be noted in any view of the status of the Anglican Church. Possessing endowments, mainly if not exclusively, national in character, and having its highest functionaries appointed by the chiefs of the State, the rights and duties of its officers and members are determined by a code of law sanctioned by Parliament and alterable only under parliamentary authority. Any disputed question arising under this body of law may incidentally come before the ordinary civil tribunals, but is more appropriately within the province of special ecclesiastical courts from which it may be carried by way of ultimate appeal to the Queen in Council.

Local Organisation

The parish. Allusion has been made to the division of the kingdom into parishes. The parishes were aggregated together in hundreds, and the hundreds are divisions of counties. But hundreds have ceased to have any real importance, and attention may be directed to the parish

'Hundreds.'

and the county, each of immemorial antiquity, though the boundaries of parishes and of counties may have undergone many modifications. Less ancient than county or parish are boroughs, most if not all of which can be traced to a definite historical origin; but boroughs may be named as the third great organisation of local life apart from those institutions, which within the present reign have been brought into existence by Acts of Parliament.

The parish.

The ancient parishes of the kingdom, numbering more than 10,000, varied greatly in area and population. Differences in size have of course always existed; but contrasts of population have been much aggravated during this century; and although by subdivisions and otherwise new civil parishes have been created so that the aggregate now exceeds 14,000, the populations vary from below 300 to upwards of 300,000. Each parish was in itself a complete unit of local life. It had its church, its burial-ground, and its parson attached to it as central facts of its existence. The inhabitants met in vestry once a year at least (Easter), and appointed one churchwarden while the parson nominated the other. They also appointed their way-wardens to look after the parish roads. A parish constable or parish constables existed also from early times as officers of peace and order. When, as often happened, gifts of land or money were made for parish purposes, they were vested in the parson and churchwardens, or in feoffees or trustees, according to the instrument making the gift.

Poor Law of Elizabeth.

When the great Act of Elizabeth provided for the relief of the destitute, the parish was accepted as the

unit of administration; and Overseers were called into existence to look after the poor. The principle of rating was laid down in the same statute for the collection of monies necessary to meet the charges of the poor. As each parish had charge of its own settled poor, it became an object on the part of landowners and parochial authorities to move those who were in danger of becoming paupers beyond the parish boundaries, whilst successive cases in the law-courts developed a code of law on the conditions of settlement. As the labourer was thus pushed about and fought over, rural life in England became inevitably degraded; and it was made worse by the well-meant action of magistrates who enforced the care of the poor on overseers by making grants supplementing the wages of labourers who appeared to be insufficiently paid. The economic condition thus developed was arrested and in no small measure redeemed by the great reconstruction of the principles of pauper relief in 1834. The new Poor Law joined the small parishes together under the name of Unions for poor law relief; and provided for the erection of a common workhouse in each Union. A common charge was thus brought into existence; and subsequent legislation has so far superseded the principle of separate parochial liability that the law of settlement has almost disappeared. Another great reform was found in the enforcement of the principle that no able-bodied pauper should receive relief except as an inmate of one of the new workhouses, thus putting an end to the practice of giving relief in aid of wages. The administration of each Union was confided to Guardians, composed partly of the magistrates resident within it, and partly of the

The Poor Law of 1834.

Guardians of the poor.

representatives of the several parishes of the Union elected by ratepayers who had additional votes as their rating increased. In 1894 these plural votes were abolished, and *ex officio* Guardians were also done away with, though a limited power was left to elective Guardians to co-opt one or two additional members. The Union thus superseded the parish in many respects as a unit of administration; but it was unfortunate that the aggregation of parishes into Unions was often made with a disregard of county boundaries; and much trouble has attended later efforts to correct this overlapping of the different grades of administrative areas.

Parish Councils.

The Act of 1894 already mentioned contained further provisions for bringing County and Union boundaries into line, and it also did something to revive the parish as a living unit by establishing in each parish an elective council to manage its affairs, except in the smallest parishes, where a periodic parish meeting was charged with these duties. Already however much has been done to stimulate and support local action in respect to sanitation, water-supply, road-making, etc. The bigger parishes had been organized as urban sanitary districts with elected boards invested with the power to execute works and levy appropriate rates; and elsewhere the organisation of the Poor Law Unions was seized upon for the discharge of similar functions. In this way Sanitary Districts, sometimes coincident with the Union areas, sometimes separate parishes, and sometimes the Union areas less the parishes separately provided for, cover the land exclusive of the boroughs; and it has recently been provided that the chairman of the Boards of these Districts should be *ex officio* county magistrates.

Sanitary Districts.

Highways.

The duty of maintaining highways from footpath up to carriage-way fell by common law on the parish, not however always coincident with the ordinary parish; while that of maintaining the principal bridges and their approaches fell upon counties. The provision for roads thus secured became quite insufficient as the internal commerce of the country developed; and turnpike roads were formed under local Acts of Parliament by which trustees were enabled to make such roads and collect tolls to repay the cost of construction and the expense of maintenance. Even turnpike roads did not supply all that was wanted, and Highway Districts were formed, often comprising new combinations of parishes, in which the care of roads was entrusted to bodies consisting of resident justices and elected ratepayers. As, however, the collection of revenue was expensive, and the amount sometimes insufficient, turnpike roads were at first gradually and then *en bloc* handed over to the local road authorities. The whole of the organisation thus described was, however, superseded by the Local Government Acts of 1888 and 1894, under which County Councils (the origin and constitution of which will be presently explained) are charged with the maintenance of main roads and bridges, whilst all other roads are put under the District Councils, urban and rural, of the areas in which they lie. Parish Councils have indeed a concurrent power of maintaining footpaths, and they have the means of calling upon the District Councils to fulfil their duties, and if necessary they can appeal to County Councils to correct the negligence of District Councils. County Councils may moreover delegate the maintenance of main roads to District Councils on con-

dition of repayment, and may also contribute to the maintenance by District Councils of ordinary highways.

The parish may be described as an independent popular unit, but the early institutions of the County were almost all associated with the Crown. It has been already noticed how the King's judges visited every county twice a year to examine and try prisoners. Within each county exists an officer, the Sheriff, whose duty it is to receive the King's judges, to provide all necessary appointments for the trials, and to execute the judgments that may be pronounced. He represents the Crown before the County and the County before the Crown. As the head of the County he is responsible for the Court-House, and was formerly responsible for prisons.[1] He summons jurymen, and he must provide a hangman or discharge the office himself. It is possible that the election of a Sheriff by the citizens of London is a relic of what was more general in a distant past. But from early times the sheriffs of each county have been appointed annually by the Crown in Council, except in Cornwall where he is appointed by the Duke of Cornwall, in Lancaster where he is appointed by the Council of the Duchy, and in Westmoreland where the office of sheriff was hereditary in the family of the Earls of Thanet till its extinction some half-century since.

The County.

The Sheriff.

The Sheriff is not only the agent of the Crown in connection with the visitations of the Judges. He was formerly the chief revenue-officer of the county, and the Chancellor of the Exchequer still assists at the nomination of sheriffs in Council. It was his duty to

[1] Since 1877 taken over by the government.

levy fines, to receive quit-rents, to look after feudal dues, to hold *inquisitiones post mortem*, and in every other way to safeguard and maintain the privileges of the Crown; a survival of which is found in the enquiry into escheats when land lapses to the Crown for want of heirs. Once more, it is as representative of the Crown that he raises the *posse comitatus* to maintain order and secure peace within the shire. The institution of the office of Lord Lieutenant in each county by Henry VIII. was in some degree an interference with the unique position of the Sheriff. The Lord Lieutenant is practically appointed for life, and his peculiar function in recommending persons to be magistrates has already been noticed. The militia of his county was until 1871 largely under his control, and he still retains a limited right of nominating to first commissions.

Lord Lieutenant.

County administration up to 1888.

As far as regards local administration, the original functions of the county were very limited. A shire hall and a county prison were necessary, and the expense of obtaining them had to be met. There were few or no county roads, and the main county charge in respect of communications was the construction and maintenance of the more important bridges. There was no county police, although a few persons acting mainly in collection of the small rate that might be leviable to defray county expenses, were called constables. Although the Sheriff was charged with the conduct of parliamentary elections, there was not up to 1832 a list of county voters for parliamentary purposes. Such work as there was to do in matters of county administration was performed by the county magistrates attending the county Quarter Sessions for the trial of

prisoners and the discharge of county business. But the quantity of county business and the amount of expense attendant thereon largely increased in the present reign, and led up to the great change in county government in 1888. County asylums were provided for the reception of the insane, and their management has been continuously improved by county committees helped and directed by periodical visits of Lunacy Commissioners. The organisation of county jails underwent similar development up to the time when, as already stated, they were taken over by the central government. A county police was set up in many counties much after the model of the Metropolitan Police, which had been established by Sir Robert Peel in London in 1829 — the action of county magistrates in establishing such a force being stimulated by a subvention from the central government of half the cost of pay and clothing, subject to the condition that the force was kept up to the standard required by the inspectors of constabulary visiting each county as agents of the central government. The police forces, voluntarily established in the first place, were made compulsory and universal by Act of Parliament in 1856.

County Councils, 1888.

This growth of county administration led to a demand for representative government in counties, and in 1888 an Act was passed establishing within each county a County Council elected practically by ratepayers male and female in single-member districts for a term of three years, with an added number of aldermen co-opted by the elected members for six years to the extent of one-third of the elected councillors. To this body all the administrative work of the county justices

was transferred, except in respect to the police, which was placed under a joint-committee equally representing the justices and the County Council. Other work was added, and the functions of the County Council have since received and may be expected to receive continuously large additions. Boroughs lying geographically within a county, having a population of 50,000 or more, are however exempted from these organisations. They have been styled county boroughs, and their councils, to which attention must now immediately be given, have been invested with all the powers of County Councils so far as they did not already possess them.

The borough.

The original boroughs were towns which received the privileges of self-government by the grant of a charter from the Crown. In a few cases these boroughs were taken wholly out of the county in which they lay, and were made counties of themselves. In a larger number of cases, but still in the minority of the whole, the charters contained provisions for the appointment of recorders holding Quarter Sessions for the trial of prisoners. In all cases a corporation was created for the ordinary purposes of local government, though the form of the corporation varied considerably. Generally the original charter contained the names of the first members sometimes called mayor and councillors, sometimes mayor and burgesses, sometimes mayor and aldermen, and the power was given of co-option to fill up vacancies. The members of the corporation elected their mayor annually, and they were commonly authorised to fill up the office of recorder when vacant. When the privilege of electing members of Parliament was also given, the right was very commonly vested in the

How governed up to 1835.

members of the corporation, and the consequences of vesting such a privilege in a small number of persons renewing themselves by co-option have been already described. In every case the governing corporation tended to become a narrow limited class; and it had often happened that the area under its jurisdiction was no more than the nucleus of what had become a large town, while the administration of the endowments and property of the corporation was appropriated to this restricted area.

Municipal Reform Act, 1835.

The parliamentary reform of 1832 was followed by the Municipal Reform Act of 1835, which applied to every borough except the city of London and some very small boroughs with an insignificant population. In all cases where necessary the borough was enlarged so as to take in its outside population, and this process has been since frequently repeated by private Acts of Parliament in respect to special boroughs. For the rest, every borough large enough for the purpose was divided into wards, so that the borough itself and every ward, where there were wards, should be represented by a number of councillors divisible by three; and it was provided that one-third of the whole number of councillors should go out of office every year. In addition to these elected councillors a number of aldermen — one-third the number of councillors — were co-opted for six years, and aldermen as well as councillors could join in co-opting for aldermanic vacancies. The aldermen and councillors elect a mayor every year, and their choice, originally restricted to their own body, is now extended to outside persons qualified to be elected as councillors. Where boroughs had recorders, their appointment was

transferred to the Crown and was in the patronage of the Home Secretary. The election of councillors was given by the Act of 1835 to male ratepayers; but in 1869 this privilege was extended to women ratepayers also. Very large powers of self-government were given to the corporations so reformed, extending in all important boroughs to the creation and maintenance of a police force; and it has been already noted that boroughs of 50,000 and upwards have been styled County Boroughs and invested with all the privileges of the County Council, from whose jurisdiction they are wholly exempt.

The fact has also been mentioned that every borough except those of the smallest class has a separate commission of the peace, of which the mayor and the retiring mayor (for one year) are *ex officio* members.

Municipal trading.

Among the other duties of borough councils is that of seeing that the communities are adequately supplied with lighting and water. Gas and water works were however in most cases originally undertaken by private companies under local Acts of Parliament, and are indeed in many cases still so promoted. Newer systems of electric lighting have often, perhaps generally, been started under licences from local authorities for a term of years. Most of the larger boroughs have however taken over and extended the gas and water works supplying their areas, and some have started electric lighting. There is a clear tendency on the part of municipalities to undertake these functions for themselves, applying at least some of the profits that may be realised in diminution of rates. Another enterprise, that of tramways, has frequently been sanctioned by municipal bodies under the authority of a general Act of Parlia-

ment, which provides that the municipality shall have the power to take over tramways at the end of twenty-one years at a price representing the cost at which such undertakings could be constructed at the time they were taken over. Some municipalities have undertaken to work the tramways which have thus come into their possession; but others are content to lease them to the companies to whom they belong for a fresh term of years upon agreed rentals. These are examples of a process known as the extension of municipal trading, the policy of which is still in debate. It is possible that under an Act of 1899 telephonic supply may be undertaken by some municipalities, and there are signs that the provision of electric power may in appropriate places come within the range of municipal enterprise. One ground of opposition to this movement is found in the apprehension that popularly-elected bodies may work their undertakings in the interests of workingmen voters rather than on commercial principles; but so far it cannot be said that experience has proved this danger to be substantial.

Large powers with respect to water and light are also vested in district councils, and indeed it is imperative on rural district councils to provide a sufficient supply of water, whilst the duty of lighting roads is more stringent on urban district councils. In connection with these functions attention must be directed to the duty cast upon all councils to see to the sanitation of houses within their areas. This has gradually extended in its scope until the duty has come to be supplemented by powers to erect dwellings for the lower classes of ratepayers. The most recent Act (1900) has even

Housing of working classes.

empowered councils to acquire land to build houses outside their own areas, but powers of building can be exercised by the Rural District Council only with the consent of the County Council, which latter authority can indeed act for itself if satisfied that the rural district council is neglecting to do its duty in this respect. Some of the larger municipalities have promoted, under private Acts of Parliament, considerable improvement schemes for the demolition of insanitary houses and the erection of improved dwellings in their stead; and although care has been taken that the rentals of the new houses should yield a suitable return to their cost, much anxiety has been expressed as to the possible abuse of this form of municipal activity.

School Boards.

In 1870 new organisations were called into existence in many parts of England and Wales for the purposes of primary education under the name of School Boards. Up to that time the State had limited its action in this regard to the making of grants in aid of such schools as satisfied certain conditions of efficiency tested by inspectors appointed to visit the schools. But the voluntary schools thus supported did not cover the whole country, and frequently attained only a low standard. Under this Act, boroughs and parishes were empowered, and, where the school supply was very defective, were required, to elect School Boards to which were given large powers of building schools and maintaining them at the expense of their several localities. Male and female ratepayers were electors of these Boards, on which women whether married or single were qualified to sit, and a peculiar machinery was adopted under which a voter in any district had as

many votes as there were persons to be elected, and could accumulate them on one or distribute them among several candidates at his pleasure — the object being to obtain on the Board a representation in due proportion of the opinions held among the electorate. These Boards now occupy areas comprising more than two-thirds of the population of England and Wales, though by no means one-third of the separate areas of town or parish. Voluntary schools, however, survive within School Board districts as well as outside them, and Parliament votes them, in addition to the former national grants, a special grant-in-aid at the rate of five shillings per head of the children in the schools; but, as observed elsewhere, these schools may join together under certain conditions in associations which have the power of distributing the total sum due among the schools at their discretion. It only remains to add that under the Act of 1870 and subsequent Acts, every child under the age of twelve must, unless otherwise satisfactorily educated, be in attendance at some elementary school; that every parent is entitled to find a place for his child free of school fees at some school within a reasonable distance; that no child can be required to attend religious instruction if his parent objects, and that in the Board Schools no catechism or distinctive formulary of any religious body can form part of the teaching.

Voluntary Schools.

Education compulsory and free.

Among the earliest duties of the parish was that of providing a place for the burial of the dead; and by common law the parish churchyard is such a place where any person dying in the parish, and any parishioner dying out of the parish, may be brought to be buried provided the deceased was baptized, not excom-

Burial Boards.

municated, and not *felo de se*. These common law facilities often became quite inadequate as population increased, and cemetery companies laid out cemeteries under private Acts, whilst a series of public Acts promoted the formation of Burial Boards, sometimes for parishes, sometimes for a combination of parishes, sometimes for parts of parishes. The public organisation of burial-grounds under the common law, and the overlapping of company Acts and public Acts, still remain most confused and unsatisfactory, and it would be idle to enter into an examination of provisions which must soon be consolidated and amended. We may look forward to a time when every parish will have a burial-ground of its own or be joined with one or more other parishes making up the whole as a defined part of the area of a District Council, with a common burial-ground for their service.

The Metropolis

The City.

The government of London has been largely reorganised in recent years, and it is unnecessary to describe at length what previously existed. It has been already stated that the ancient city of London was not dealt with by the Municipal Corporations Act of 1835, nor has it in any substantial way been since changed. The City is divided into twenty-six wards, the ratepayers of which annually elect common councilmen in varying numbers having some rough relation to their size. The whole body of common councilmen is thus re-elected every year, and each ratepayer can give one vote to as many candidates as there are members to be elected. Each ward moreover

elects an alderman for life, subject however to a power — very rarely used — on the part of the existing aldermen to veto the choice of the ward.[1] The liverymen of the different city guilds, who are not all necessarily ratepayers, meet annually in the Guildhall and choose two out of the aldermen, one of whom is appointed by the Court of Aldermen as Lord Mayor. The alderman so selected is subsequently presented to the Lord Chancellor to receive the formal sanction of the Crown.[2] The Lord Mayor, the aldermen, and the common councilmen make up the governing body of the City. For rare purposes the aldermen sit apart, constituting what is called the Court of Aldermen. The City has civil and criminal courts of its own, and a small debt court corresponding to an ordinary County Court, and judges were formerly elected by the City, a Recorder by the Court of Aldermen, and a Common Sergeant and Commissioner (Debt Court) by the Common Council; but the two last are now appointed by the Crown, and the Recorder, though still chosen by the aldermen, must be approved by the Crown before entering upon his functions.

London County Council.

Around the City, with a constitution practically unchanged for centuries, Greater London grew up almost entirely under parochial conditions, until for purposes of main drainage and similar undertakings a Metropolitan Board of Works was established in 1855 consisting of representatives appointed by parish vestries

[1] There is another alderman elected by his brother-aldermen, the senior being usually chosen, to represent the nominal ward of Bridge Without.

[2] As a matter of fact, the position of Lord Mayor passes in regular course through the aldermen by seniority.

and by the City of London. In 1888, under the Act establishing County Councils throughout the kingdom, the area of the Metropolitan Board of Works was made an administrative county with elected councillors and aldermen, differing only from other counties in that the City and the parliamentary boroughs within it were adopted as its electoral divisions, the City returning four and each borough two members to the Council, whilst the number of aldermen co-opted by the councillors was made one-sixth instead of one-third of their number. To the County Council thus created were transferred all the functions of the Metropolitan Board of Works, the administrative duties of the county justices, and sundry local duties up to that time discharged by the Government departments, thus giving it a much greater authority within the county of London than is possessed by County Councils elsewhere; though the separate organisation of the City and the autonomous administration of the separate parishes by their vestries remained respected. Another step was taken in 1899 by the passing of an Act under which the County of London outside the City is now divided into subordinate boroughs each with its mayor, aldermen, and councillors on the pattern of municipal corporations; but in reality taking over only the function of the pre-existing vestries, the parochial areas of which will in many cases be conterminous with those of the new boroughs. The proximate settlement of the administration of London is thus apparent. A superior authority, the County Council, possesses powers some of which run even within the ancient city, but in their fullest measure extend only throughout the rest of the

New London boroughs.

administrative county, whilst subordinate boroughs will undertake more strictly limited functions within their respective areas, some of which will contain two or more parishes maintaining a separate existence in respect to ecclesiastical affairs, and for the administration of local trusts. The organisation of the county in respect of the relief of the poor remains under the Guardians of Unions and is thus disconnected from the new creations. Above the Guardians there exists another Board, partly elected by them and partly nominated by the Local Government Board, charged with the administration of metropolitan asylums for pauper imbeciles and lunatics and of hospitals for infectious diseases.

Poor Law in London.

The city of London maintains a police force of its own receiving no contribution towards its cost from the Treasury, but the county of London and indeed a larger area without it are served by a Metropolitan Police Force under the exclusive administration of the Home Secretary, though nearly one-half of its cost is met by a rate charged on the Metropolitan Police area.

London police.

The water and gas supplies of London are in the charge of private companies under several Acts of Parliament, and the County Council has failed in obtaining parliamentary sanction for the organisation of either gas or water works. On the other hand, several lines of tramways have through effluxion of time been acquired by the powers of expropriation, and are directly worked by the County Council. The electric lighting of the metropolis is almost entirely in the hands of private companies under licences for the statutory term from the several vestries.

London water, gas, etc.

The School Board of London is elected for the entire

London School Board.

county, and its members are returned under the cumulative vote for divisions corresponding with the parliamentary divisions of London at the time of the Education Act of 1870.[1]

English land system.

This chapter may fitly conclude with a reference to other fundamental institutions forming part of the chain of circumstances besetting the action of Parliament.

Law of Succession.

The adult male citizen has long had an absolute testamentary power over his property in the selection of the objects of his good-will, and so has the unmarried or widowed woman; while more recently the married woman has been given by the Legislature similar power over her separate property. There is no obligation in our law to remember children or any other dependants in making a will, and as no child need be remembered, no child has a share or portion which must descend upon it. Where the owner of property does not make a will, the law divides his estate and makes a distinction between property in land, other than land held for a term of years, and property in moveables. Landed property or real estate descends to the eldest son, or if he is dead without leaving issue to the next eldest son, and it is only when there are no sons or representatives of sons that it passes to a daughter, in which case, if there is more than one, it is divided equally between them. The widow according to the old law is entitled to one-third of the rents of her husband's real estate during her life, but this provision is generally avoided by the arts of conveyancers who deal with it as an encumbrance on title. Where there are no

[1] Lambeth has however since been divided for School Board Elections into two districts, East and West Lambeth.

children, landed property passes to a man's father as his heir, and through him to such person or persons as may be entitled to succeed him under his will, or by heirship if there is no will. Moveables, or as they are called 'personal property,' pass in case of intestacy as to one-third to the widow, and as to the remaining two-thirds equally among the children; or if there be no children, as to one-half to the widow, and the other half to what are called the next-of-kin, ascertained according to definite rules of succession. A recent statute provides that where there are no children the widow shall have the first claim up to £500. Proposals have been often made to assimilate the law of succession to real property to that of succession to personal property, but hitherto without effect, partly because intestacy is exceptional, but still more because the practice of settlement to which reference must presently be made supports and is supported by the law of primogeniture. No practical suggestion has ever been made in favour of compulsory division of any part of a man's estate, and testamentary liberty in this respect may be regarded as rooted and fixed in our habits. The law however very definitely prescribes the limits of time and descent within which a man's will may run. A man may make a will providing for the devolution of property as long as any designated life or lives in being at the time of his death should survive, and for twenty-one years after.[1]

[1] A man can leave personal property to a charity as defined by law without limit of time, but he cannot give lands to a charity by will. Any benevolent intention of this kind must be irrevocably effected by deed at least six months before his death.

A settlement extending to a like series of successions may also be effected by deed between living parties. Under this power of prolonged limitations lands are habitually settled in families so as to be maintained with little difficulty intact from generation to generation for the endowment of the successive heads of the family; and personal property can be bequeathed either with express direction for investment in land to form part of the family estate, or with a direction that its income shall be paid to the person who would be entitled to the rents of the land. If a man who is one of the makers of fortunes has acquired by purchase large landed property, he can thus make a will, giving his eldest son an interest or estate for life; with succession to the son's son, if born, for life; and, if unborn, for an estate over which such son would have a limited command on attaining the age of twenty-one, with further successions over other sons of the testator. In this way a "county family" is founded with some promise of permanence. In the will would be inserted provisions for raising portions for younger children, for giving a jointure to a son's widow, and a general Act now enables a person entitled for life to land thus settled to give leases and to effect sales on condition of re-investment of the proceeds of the sale; the object of all such provisions being that the owner for life may exercise all useful control in the management of property whilst safeguards are taken that its *corpus* shall be undiminished. Under a scheme of settlement such as described, the time will probably come when some one will be in possession of the property for life with an eldest son who has attained the age of twenty-one, upon whom the property will

Family settlements of real estate.

devolve if he survives his father, but who meanwhile is entirely dependent upon his parent for support; and it is under such circumstances that a transaction is effected between the father and son under which the latter, in consideration of an immediate fixed income, and perhaps of provisions enabling him to marry and give his widow a fixed income, joins his father in resettling the property, so that it is carried on to another generation in favour of his unborn son, who may be expected in due time to join in another resettlement. It would be difficult to exaggerate the tenacity with which this system has driven its roots into English society, and the importance of its influence over the working of the constitution. Profoundly conservative forces abide and flourish under it. Although the institution of County Councils and the reform of District Councils have taken away many of the administrative functions of county magistrates, their judicial influence is practically intact, and it is from the owners of land that the magistrates are mainly recruited. What has been called the squirearchy is thus maintained over great parts of England, and an order has been established, entrance into which is an object of ambition to members of the commercial and industrial classes as they grow wealthier, and continuance in which is jealously guarded on the part of those who have been born into it. The power of keeping together and handing down from father to son a sufficient endowment of property is almost a necessary accompaniment of the existence of any hereditary honours; and the security of the House of Lords, in which legislative privileges are hereditary along with titles of honour, would be seriously menaced

Their influence on social life.

if it were not buttressed by the influences derived from the possession of large estates spread throughout the country. It must however be added that the immunity of family estates from dilapidation is not perfect. It has been said that in wills and settlements power is generally reserved of raising portions for younger children. Sometimes too it happens that, on resettlements by a father and his expectant son, it is found convenient for family reasons to raise money for immediate use. A succession of thriftless heads in a family may thus accumulate charges resulting in a breaking up of the estate. Again, it may happen that a father may die leaving a son of tender years who comes into absolute possession of the property on attaining the age of twenty-one, and if the latter is a wastrel, he may dissipate his inheritance, if he is not checked by the limitations of a new settlement which would be the natural accompaniment of his marriage. These dispersions of estates may be regretted in the interests of family descent, but if they did not happen and so enable new accumulations to be effected, powers of settlement could scarcely have remained unmodified. As it is, they constitute a strong bulwark to the present organisation of English society; and though often attacked in argument, no definite proposal for reducing their scope has now for long years been mooted in Parliament. Steps have been frequently taken in adjustments of the legal relation of landlord and tenant and in facilitating the sales and exchanges by life-owners to reconcile the existence of settlements with the fullest agricultural use of land and with the satisfaction of those demands for the acquisition of land for building and industrial purposes which natu-

How broken up.

rally arise in growing communities; but no step has been taken or even suggested for a reduction of powers of settlement themselves. It has been otherwise in the colonies founded by emigrants from home. Into these, as into the United States, the law of England in respect of land was originally carried, but the law of primogeniture has been everywhere abolished, and the power of settling land on unborn persons has almost as universally been taken away, and it is understood that in the few cases in which this last power has not been destroyed it is very rarely exercised. In these newer communities without hereditary honours and hereditary privileges, hereditary estates, even where permitted, have not come into existence, and the sentiment against their creation will probably make them continue in scarceness.

Unknown in colonies.

CHAPTER II

SCOTLAND: CHURCH, LAW, LOCAL ORGANISATION

Scotch Institutions respected by Parliament.

PARLIAMENT cannot be less respectful of Scotch than of English institutions. When the two crowns became united, there was no question of the independence of each of the other. The Act of Union, which brought the two Parliaments into one, was a treaty between two independent powers containing mutual covenants affecting to give to certain institutions an eternal inviolability, which in the nature of things cannot be maintained. As has already been observed with respect to the Irish Act, both Parliaments committed the fortunes of Great Britain to a United Parliament which has no legal superior and from whose statutes there can be no appeal other than a revolutionary recourse to arms. But the spirit of the agreement required that the utmost respect should be paid to the exceptional institutions of the two kingdoms; and this respect has in fact been observed. It is probably true that no one of the fundamental institutions of Scotland has been changed by the United Parliament without the assent of a majority of the Scotch representatives in the House of Commons, if not also of the representative peers. It may indeed be said that, in respect of Scotch affairs, Parliament has not only refrained from positive action in opposition to

what appeared to be the will of Scotland; it has paid respect to that will in consenting to legislation demanded by it, which otherwise the majority might have been slow to approve.

Central administration of Scotch affairs

Scotland greatly increased in population and prosperity in the earlier years of this century; and its parliamentary position before 1832 was even less satisfactory than that of England. We need not however go behind the Reform Act of that year, which extended the same principles of enfranchisement to both kingdoms and approximately redressed inequalities of representation.

formerly vested in Home Secretary,

The Minister primarily responsible for the government of Scotland was, and remained down to 1885, the Home Secretary. Upon him had descended the functions of the whilom sole Secretary of State, and he had the charge of the government of Scotland, as he had at one time of that of Ireland also. In the discharge of his parliamentary responsibilities he was assisted by the Lord Advocate, the principal law-officer of the Crown in Scotland, to whom a seat in Parliament was a necessity. This functionary, in subordination, often little more than nominal, to the Secretary of State, conducted the parliamentary business of the North, and practically administered much of its patronage. As the functions of government developed, and new offices were created, the heads of the departments thus called into being carried their work throughout Great Britain. Public Education in Scotland thus came to be under the same Minister as Public Education in England; and similar examples might be cited. In 1885 however a new departure was made. A special office was created, that of a Secretary for Scotland, and to this functionary was given the work which

with assistance of Lord Advocate,

in 1885 transferred to Secretary for Scotland.

had been distributed over many departments, — the Home Office, the Local Government Board, the Education Department, etc.; whilst the Lord Advocate was subordinated to the new Minister. The Secretary is not, it must be observed, a Secretary of State; and he is only occasionally a member of the Cabinet. But he collects together and particularises Scotch business at the risk of a possible divergence between the streams of development in England and in Scotland; and — as experience will suggest — not to the enhancement of the office of Lord Advocate. It may however be expected that the change will not diminish the degree of regard paid by the Imperial Parliament to the maintenance of existing Scotch institutions.

The Church of Scotland;

The most important of these institutions, safeguarded by the Act of Union, was the Presbyterian Church. Every succeeding sovereign is sworn to maintain its organisation, and the Confession of Faith to which its officers are required to adhere is of statutory obligation. This Confession, with the Larger and the Shorter Catechism, contain the doctrine of the Church, whilst its government is entrusted to a series of bodies rising, if the word may be permitted, in a hierarchy one above the other. In each parish the minister and a varying number of elders constitute the kirk-session. For a group of parishes the minister with one elder from each constitute the presbytery. A group of presbyteries constitute a synod; and above the synods is the General Assembly, to which each presbytery sends ministers and elders in proportion to its size. Each of the Royal Burghs sends an elder; and each of the Universities sends, as it chooses, a minister or an elder.

its organisation

and General Assembly.

A Lord High Commissioner nominated by the Crown opens the Assembly and attends its sittings; but the working head is a Moderator, chosen by the Assembly at the end of each session to preside at the next session. The struggle which was waged three centuries ago between Crown and Assembly has found a solution in the independent announcement, at the close of each session by the Lord High Commissioner and by the Moderator, of the date of the next meeting of the Assembly. Given the permanence of its doctrinal symbols and of its organisation, the government of the Scotch Church may be said to be purely democratic. This was indeed formerly qualified by the rights of patrons to nominate ministers in certain parishes; and the decision of the law-courts, affirmed in the last resort by the House of Lords, that the Assembly could not invest a congregation with a power to veto such an appointment, led to a great disruption in 1843, as a result of which a Free Church of Scotland was established possessing the same standards of doctrine and the same organisation as the original Church and differing from it only in the fact that its property and income are derived from voluntary offerings of deceased and living members, and that no right of patronage interferes with the free choice of congregations. It seems uncertain whether the constitution of this Free Church permits any development of doctrine in succeeding generations. It is confidently affirmed that its standards are immutable; but the most stiffly prescribed constitution has often been moulded by the use of interpretation. To return to the Established Church — the cause of the controversy which led to

Free Church founded, 1843,

to secure the choice of ministers by congregations.

This choice given to Established Church, 1874.

the disruption in 1843 was removed in 1874 by an Act abolishing patronage and vesting the choice of ministers in parochial communicants and adherents. Save in the possession of a limited national endowment of manses and teinds, there is now little to distinguish the Established from the Free Church. In freedom of domestic life it occupies before the law precisely the same position as the unestablished religious communities, whether of England or Scotland, the administration of whose trusts may become the subject of an appeal to the judgment of courts of law.

Judicial system.

The judicial system of Scotland has differed widely in origin and history from that of England, and it still shows large differences of form, though not of principle. The Supreme Court consists of thirteen judges, and is called the Court of Session on its civil, and the Court of Justiciary on its criminal side. From its civil judgments appeals go to the House of Lords; but its action is final in criminal matters. It is divided into three Courts; the Lord Justice-General and three judges; the Lord Justice-Clerk and three judges (forming together the Inner House); and five other judges, who are the Lords Ordinary of the Outer House. The two first divisions are Courts of Appeal from the Outer House, and the Lords Ordinary pass by seniority to fill vacancies in them. All the members of the Court are appointed by the Crown, and hold office *ad vitam aut culpam*, — what constitutes *culpa* being apparently left without strict definition; but it seems to be assumed that judges in Scotland are removable, as in England, on an address from the two Houses of Parliament. Probate and Divorce causes form part of the general work

Court of Session is Supreme Court.

of the Court of Session, and the law of Scotland has never known the separation of Law and Equity which till lately prevailed in England. The members of the Court of Justiciary go on circuit as in England for the trial of civil and criminal cases.

Sheriffs.

Under the supremacy of the Court of Session all Scotland is divided into sheriffdoms in which smaller counties are sometimes grouped together, each having its judge both for civil and criminal causes. This is the Sheriff-depute, who is commonly called the Sheriff, the principal sheriffship being a merely nominal office. He is appointed by the Crown *ad vitam aut culpam*, and in his case the *culpa* is determinable by the Court of Session. He is allowed to practise outside his own jurisdiction. The Sheriff within his sheriffdom is a County Court Judge trying criminal as well as civil causes. In the former he is intimately associated with an officer (appointed by himself or by a former sheriff)[1] called the Procurator-Fiscal,[2] who has no parallel in English legal organisation. He is the Public Prosecutor of the sheriffdom, and generally conducts all prosecutions; though a person affected by an alleged crime may prosecute on his own motion, and the Procurator must concur in his doing so, if he does not himself undertake the prosecution. The Procurator moreover has the duty of enquiring into all doubtful cases of death and of outrage to person or property. He conducts these enquiries privately, holding no court and

Procurator-Fiscal acts as Public Prosecutor

and as Coroner.

[1] He is removable only by the Secretary of State upon adverse report of the Lord President or Lord Justice-Clerk.

[2] The Lord Advocate may be called the Procurator-Fiscal of the kingdom.

not taking evidence on oath. Memoranda of evidence thus got together are called precognitions; and it is only when a charge is formulated before a court that witnesses are sworn. As auxiliaries to the Procurator,

Justices of the Peace.

Justices of the Peace are appointed by the Crown for divisions of counties by an adoption of English practice; but no property or other qualification is necessary for such an appointment. In burghs the Provost or head of the municipality is always included in the Commission of the Peace.

Juries in criminal cases;

The law of juries in Scotland differs materially from that of England. In criminal proceedings, not conducted under statute by way of summary procedure, a jury is associated with a judge or sheriff, though there are some exceptions, and there were formerly more in cases of light offences, tried by the sheriff. A jury consists of fifteen persons, and a verdict of a majority suffices.[1] A verdict may be either 'guilty' or 'not guilty' or 'not proven.' An accused person in respect of whom the last verdict is returned might theoretically be put on his trial again, but in practice this is regarded as inadmissible.

in civil cases.

In civil causes trial by jury had for centuries entirely disappeared in Scotland until partially introduced in 1815. It has since been extended, and juries are now obligatory in much the same class of cases as in England, whilst in other cases they may be used to try subsidiary issues. A jury in a civil cause consists of twelve persons, and a verdict of a majority is sufficient after a jury has been withdrawn three hours in deliberation.

[1] In cases of treason the jury is twelve and the verdict must be unanimous.

Advocates and law-agents.

The administration of the law in Scotland is completed by the existence of advocates and law-agents. The former, corresponding to English barristers, constitute a society or College of Advocates which is self-governing, with an elected Dean of Faculty at its head. Persons desiring to be admitted to the position of advocate petition the Court of Session which remits the application to the College, by whom the applicant is approved after satisfying the following conditions:—(1) passing an entrance examination attesting a liberal education; (2) attendance on prescribed lectures and training for twelve months; (3) passing specific examinations in legal knowledge. The law-officers of the Crown, the Lord Advocate and Solicitor-General, are necessarily advocates. The law-agents correspond to the English solicitors, and comprise the classes known as writers to the signet, solicitors of the Court of Session, and procurators of the sheriff court. They are admitted on petition to the Court of Session on conditions (1) of having served five years' apprenticeship (reducible in case of University graduates to three) to a law-agent; and (2) of passing examinations either by recognised bodies such as the Writers to the Signet or by examiners appointed by the Court itself.

Peculiarities of Scots Law.

It will not be out of place to add a few notes on some cardinal differences between the law of Scotland and that of England. One of the most important is that marriage in Scotland requires no special form or ceremony to give it validity. The maxim *consensus facit matrimonium* is fully recognised. All that is required is evidence of consent, and this may not only

Marriage requires no ceremony.

be supplied by a declaration of the parties,[1] but may be inferred from 'habit and repute' of their mutual life. Marriage moreover has the effect of conferring legitimacy on children born to the parents before the status of marriage was established, provided the parents could have been lawfully married at the time of the birth of the child. The law of Scotland is moreover markedly different from that of England in respect of moveable property of married persons. Apart from recent legislation, recognising and establishing the separate property of married women under similar conditions in both countries, Scotch law gives rights of succession to moveable property held during marriage. Formerly it was held in accordance with foreign jurists that husband and wife had a community in such property, but inasmuch as the husband as administrator could sell or dispose of it at his own will this title of community was always shadowy and has of late been discarded. The title of the husband is however limited, so that whatever moveables he may possess at the time of his death are divisible, if there be children, into three parts, one for the widow, one for the children, and one disposable according to his will; and if there be no children, into equal shares, one for the widow and one in his disposition.[2] The law respecting immoveables or real estate has practically become the same in the two kingdoms. It was not however until 1868 that the absolute owner of real estate in Scotland could dispose

Succession to moveable property.

Real estate.

[1] One at least must have been resident in Scotland for a qualifying period.

[2] The title of the representatives of a predeceased wife to the third or a half share, as the case might be, at the time of her death, was abolished in 1855.

of it by testamentary disposition. He had power whilst alive to dispose of it by deed; but this did not extend to gifts by will as in England. In connection with this it must also be observed that it was not till 1848 that the power of terminating an entail of landed property was subjected to the same principles in Scotland as in England, and identical conditions of freedom of barring entails were not established until 1875. As the law now stands an entail in Scotland may be cut off by concurrence of the heir-in-possession and the heir-apparent — the personages corresponding to the tenant for life in possession and the first tenant-entail in remainder of English settlements.

Entails.

The ancient divisions of Scotland for the purposes of administration were the County and the Parish, to which may be added the burghs called into existence by royal charter. The parishes of Scotland exhibit similar variations in size and population to those of England, but the average size is much greater, as may be inferred from the fact that there are only 886 in Scotland as against 14,896 in England and Wales. Many of the largest in size or population have been divided for ecclesiastical purposes into *quoad sacra* parishes, and these divisions are treated as separate parishes in the educational organisation of Scotland, but for ordinary civil purposes the sub-division is disregarded. Each parish had separate care of its poor, its church, manse, etc., and its roads. The cost of the ecclesiastical provision was thrown upon the heritors or landed proprietors, that of the poor upon the heritors with the assistance of an assessment made by the kirk-session, whilst the roads were maintained by *corvée* or forced labour of residents, to which came to be added

Local Government Parishes.

assessments of proprietors not contributing labour, and subsequently tolls, called the Causeway Mail, at certain fixed points. Local Acts developed the principle of assessment, and the Central Government intervened to make some main highways chiefly in the North, and intended as military roads. Where assessments were made in parishes these were imposed in equal parts on owner and occupier.

School Boards.

Parochial functions have not been much changed in respect of church matters except so far as education may have been regarded as church work, but otherwise they have been largely developed. In respect to education the parish was from the sixteenth century charged with the duty of maintaining a school, which formed a peculiar distinction of Scotland, but in 1872 an Act was passed under which School Boards are made universal throughout Scotland. Smaller parishes may join together, but subject to this, every parish has its School Board elected by the ratepayers with a cumulative vote. The Boards took over at once the parish schools, and have taken over many of the other existing schools, especially those of the Free Church. Education in the schools provided by the Boards is safeguarded by a 'conscience clause' in the interest of children whose parents do not desire them to receive special religious instruction; but otherwise religious teaching is free from the limitations imposed in England, the Shorter Catechism of the Scotch Church being habitually taught in them. The Act for abolishing fees extended to Scotland as well as to England, and education has in fact become gratuitous and compulsory but not secular.

In the management of the poor relief an Act of 1845

created a Parochial Board in every parish, and encouraged parishes to join together for the erection of poorhouses. These Parochial Boards have a mixed constitution of heritors above a certain value, representatives of kirk-session, and elected representatives of the ratepayers, and exhibit great diversity in their composition. The cost of the administration of the poor relief is in most parishes defrayed by a rate paid half by occupiers, half by owners; but the Act gives Parochial Boards power, with the consent of the Board of Supervision, to adopt other rules of assessment. The Board of Supervision is charged with the duty of watching the whole work of the Parochial Board in the best interests of pauper management. It consists of a paid chairman and several *ex officio* members, and has a medical as well as clerical staff to facilitate its work.

Parochial Board administers poor relief.

The organisation of police force for the maintenance of order has followed much the same lines in Scotland as in England. The old local guardians of the peace, however designated, were always imperfect and sometimes quite illusory as maintainers of order; and in 1839 a permissive Act enabled counties and boroughs to establish forces of an improved character. The permissive Act became imperative in 1857, and under it a force was established in every county including the burghs within it that had not already created forces for themselves. These county forces are placed under the immediate control of the Commissioners of Supply to whom reference will presently be made, but since the formation of County Councils have been made subject to Joint-Committees of the Commissioners and of the County Council. The imperial treasury contributes

Police.

the same proportion a (moiety) of the expense of these forces in Scotland as in England; subject to like condition of efficiency certified by inspectors formerly appointed by the Home Secretary, now by the Secretary for Scotland.

Commissioners of Supply.

Turning now to the organisation of counties, the important functions of sheriffs as judicial officers already noticed may be recalled to memory. Sheriffs were also invested with many administrative duties, some of which they still discharge. The introduction of Justices of the Peace has also been mentioned, but the government of counties was until recently the work of Commissioners of Supply in association with the Sheriff, the Commissioners being practically Justices of the Peace under another name. Their earliest duty was to assist the Sheriff in the collection of the revenues of the Crown, and they still have to collect the land-tax. Gradually however the work of the Commissioners of Supply became much the same as that of county magistrates in England in Quarter Sessions, though their legal obligation did not extend beyond one meeting a year. In this way they became charged as already noticed with the control of a county police, the care of lunatic asylums, etc., and the chief notable difference between them and the Quarter Sessions authorities of England was that the burden of the rates was thrown upon owners only except rates under the Roads and Bridges Act (see below) which were divided equally between the owner and occupier of the properties assessed. The

County Councils.

creation of County Councils in England in 1888 was followed by the establishment of similar bodies in Scotland in 1889, and was accompanied by a similar transfer

of administrative functions. Scotch County Councils differ however from those of England in having no co-opted aldermen added to their elected members, and a limitation of a novel character was imposed. The Act creates a joint police committee as in England, half chosen by the Commissioners of Supply and half by the County Council, and goes on to provide that no capital expenditure (meaning expenditure on roads, bridges, buildings, land purchase, etc.) shall be incurred without the consent in writing of such standing joint-committee.

The establishment of County Councils was accompanied by a final settlement of the question of road management. The earliest system of supporting roads by statute labour and by tolls has been mentioned, and also the creation of road districts under separate local Acts; to which must be added the formation of turnpike roads on the same system as in England. All these roads came more or less under the control of the Commissioners of Supply, to whom in 1863 the Central Government transferred the maintenance of the main military roads also previously mentioned. The gradual extinction of turnpike trusts and the increased powers of Commissioners of Supply led to a demand for an association of the representatives of ratepayers with the Commissioners, and in 1878 a Roads and Bridges Act was passed creating in every county a mixed authority consisting of the Commissioners of Supply and elected representatives of the ratepayers in each parish. On the formation of County Councils the functions of these bodies were naturally transferred to the new authorities in whom the other administrative duties of the county had been collected, and it was arranged

that the average amount of rates borne in the past by owners should continue to be borne by them, whilst additional sums that might be required should be thrown equally upon owners and occupiers.

Burghs.

Burghs in Scotland as in England had their origin in charters from the Crown. A large number of existing burghs are still specially denominated Royal Burghs. Their constitutions exhibited great varieties of organisation; but in 1833 a new and uniform method of popular election was introduced. Burgh councillors are now elected, in wards if the size of the burgh requires it, by ratepayers male and female and parliamentary electors, for a term of three years, and one-third goes out of office every year. The elected councillors choose out of themselves a Provost (or Mayor) and bailies, the latter varying in number according to the size of the burgh. The provost and bailies are magistrates for the burgh, and the provost is *ex officio* the Commissioner of Supply for the county. The provost holds office for three years, but the bailies get no extension of tenure through their election, and go out of office when they retire as councillors. In the larger burghs a separate police force is maintained, and Glasgow is served by a stipendiary as well as other magistrates. In smaller burghs the police is part of the force of the county. Burgh Councils have much the same functions in Scotland as in England. Their resources are known by the name of the 'Common Good,' and are supplied by rents, with not unfrequently octroi duties or tolls and rates specially levied. The burden of the rates is thrown upon occupiers although in the case of holdings of £4 and under the owner is required to pay them in the first instance.

Owner and Occupier.

The Royal Burghs enjoy a peculiar privilege in the election of Commissioners to meet in convention at Edinburgh once a year to consider subjects of 'common profite'; but these meetings, though hallowed by usage of more than four hundred years, have no legislative authority and are not now regarded as important. In Edinburgh, Glasgow, Aberdeen, Dundee, and Perth magistrates are found called Deans of Guild, survivals of similar officers once existing in all burghs elected by merchants, builders, and others forming what is called in Glasgow the Merchants' House, and elsewhere the Guildry, and associated with the common council. The special duty of these deans is the regulation of buildings touching height, structure, alignment, etc., and in general the enforcement of such matters of police as have reference to building. For these purposes they hold courts in which they are assisted by their own procurators-fiscal.

CHAPTER III

IRELAND

Irish institutions of foreign origin.

THE institutions of Ireland everywhere bear the impress of its history. They have been largely imported from a conquering country and imposed upon the conquered. Some of them have by virtue of their own merits become fairly rooted in the soil, but few or none have acquired that overmastery of respect which fastens around the self-sown customs and processes of nations. It is a natural consequence of being less firmly planted that they should be more lightly treated. The essential guarantees of liberty and of law have been frequently suspended, and sometimes, it is to be feared, without the justification of imperious necessity. Changes are however in progress — changes which mean growth — and there is some promise of a development resulting in institutions possessing stability because approved by the mind of the people among whom they are established.

Lord Lieutenant and Chief Secretary.

At the head of the administration of Ireland is the Lord Lieutenant or Viceroy, who is the immediate representative of the Crown, and discharges all the functions of sovereignty, as he is environed with all the formalities of a court. All appointments are made by him, and all administrative acts are executed in his

name. This position is however very different from that of a Governor of a self-governing colony. He has no ministers to whose advice he must listen because they possess the confidence of a representative assembly. He is himself one of a Ministry with whom he is directly or indirectly in constant consultation and as whose delegate he comes to Dublin. He is commonly, though not of constitutional necessity, a member of the House of Lords, and if he leaves Ireland he appoints Lords Justices to execute his functions in his absence. He has a Chief Secretary who represents him in the House of Commons, and who is in truth his responsible Minister before that Assembly. The separation of power between the Viceroy and his Chief Secretary is not however absolutely determined. The salary of the Lord Lieutenant is charged upon the Consolidated Fund, so that his acts do not regularly come before the House of Commons in Committee of Supply, whilst the salary of the Chief Secretary, which is voted annually, is always used as an opportunity of criticising the policy of the Irish government. In this respect there is some approach to an analogy between the relations of the Lord Lieutenant and his Chief Secretary, and those of the Crown and its Ministers; and it has not unfrequently happened that, whilst the Viceroy discharges the ceremonial function of his office, the Chief Secretary is a member of the Cabinet upon whom the real duty rests of originating, if not determining, the Irish policy of the Government. On the other hand the Lord Lieutenant may be a member of the Cabinet, and his Chief Secretary the executor of his policy. It must indeed be remembered that the solidarity of the

Cabinet in respect of Ireland as of all other matters is complete; and the point now insisted upon is no more than this, that the representative in the Cabinet of the Government of Ireland, who, as a member of the Cabinet, leads and conducts its Irish policy, is sometimes the Lord Lieutenant and sometimes the Chief Secretary. It is not long since neither was a member of the Cabinet, but it has in more recent years been found fitting if not necessary that one of them should occupy that position, and it is not unnatural that the Chief Secretary, as a member of the House of Commons and always in touch with it, should more frequently be the real Minister for Ireland sitting in the Cabinet. There have however been notable exceptions, both in Liberal and in Conservative Administrations, and it might be hazardous to say what will be the probable course of the future. In any case it is indispensable that each should have the full confidence of the other; and no Chief Secretary could now have to complain, as was the case in the last administration of Sir Robert Peel, that he had to defend in the House of Commons a policy as to which he had not been consulted, and appointments of which he had not been informed. The abolition of the Lord Lieutenancy has often been discussed, and a bill for the purpose was introduced into the House of Commons in 1850; but the change was resented by the majority of Irish members, and the bill was abandoned. The mere substitution of a Secretary of State for Ireland for the Lord Lieutenant would have the effect of taking away the pageantry of the office from Dublin, but would not necessarily produce a vital change in the government of Ireland. If the

several branches of administration in Ireland were attached to the corresponding branches in England, there would be a movement to a real unification; but as between England and Scotland there has of late been a tendency to disconnection, and it cannot be said that there is at present any likelihood of soon drawing into one the ordinary branches of administration in the United Kingdom, in the way in which the administration of the Post Office is unified.

Legal system of Ireland.

The legal system of Ireland is modelled on that of England, the English conquerors having brought their Common Law with them and with it their modes of procedure. The Lord Chancellor of Ireland appoints Justices of the Peace in every county, and in those boroughs which have separate commissions. The principle of nominating justices on the recommendations of the Lords Lieutenants of counties has also been followed, but of late has been more freely modified by direct appointments at the discretion of the Chancellor. In Ireland however it has been thought necessary to supplement these unpaid magistrates by the appointment of paid resident magistrates nominated by the Lord Lieutenant, who were supposed to bring to the discharge of their duties a larger knowledge of law, if not a more judicial temper, than can always be found among country gentlemen. These resident magistrates may be discharged from the exercise of their functions by the Lord Lieutenant, and in times of political excitement they are liable to become the object of invidious attack as part of the Administration. Before the magistrates, resident and otherwise, prisoners apprehended under charge of crime are brought as in England and

dealt with summarily or committed for trial at the Assizes or Quarter Sessions. The administration of the criminal law differs however in this most material respect, that whilst in England any one who alleges that he has been wronged can institute and maintain a criminal process, and prosecutions are thus habitually undertaken, in Ireland the investigation and prosecution of crime are left in practice exclusively to the police and the other agents of the Government. In this way the agents of the Government have attained something akin to the protection which the *droit administratif* of most continental nations throws over their police and magistrature. This comparative immunity could be broken down by any 'village Hampden,' but remains unshaken. Something of this is perhaps due to the character of the police itself. It has been seen that in England the parish constable has developed into a County and Borough Constabulary, but the organisation and control remain local, although the central Government secures a uniformity of standard by making a contribution to the cost of these forces on the condition that they satisfy the requirements of itinerant inspectors. The constabulary of Ireland has nothing of this local character. It is everywhere recruited, organised, and directed by the Irish Government, which determines the numbers to be allotted to each county, and moves men and officers freely to and fro at its discretion, making the connection of the Administration with any county felt only when the county is called upon to pay for an additional force drafted into it in consequence of special local disturbance. The higher the efficiency of a force so pervasive, the greater must be its influence, and it

Irish police.

is not surprising that it should practically engross the conduct of prosecutions. The relations between the resident magistrates and the police tend at the same time to a confusion of administrative and judicial functions, and this does not allay that suspicion of officialism intruding into the organisation of justice which detracts from its authority in popular estimation.

Criminal administration. Juries.

The several stages of criminal administration in Ireland closely follow those of England. Prisoners committed for trial come before judges going circuit at the Assizes or before the Courts of Quarter Sessions; subject however to the observation already made that the prosecutions are always conducted by government officials. The choice of juries moreover is by no means so simple. The right of challenge by the Crown is freely exercised in times of political excitement with the avowed intention of obtaining jurors who may be trusted to give true and unbiassed verdicts; but the process easily lends itself to the accusation of packing juries with jurors who may be trusted to convict. The necessity of such a sifting is odious, but very few deny it. Jurors who are habitually told that they cannot be trusted are not likely to develop the sense of responsibility; and in the long run it is better to trust juries too much than too little. The same considerations that have led to the appointment of resident magistrates to assist unpaid magistrates in Petty Sessions have led to the appointment of paid Chairmen of Quarter Sessions. These latter gentlemen are also the judges of County Courts.

The High Court.

Above all these there exists a High Court of Justice in Dublin just as in England. As the Common Law was imported into Ireland, a Court of Chancery

duly followed with its larger principles of equity; and Common Law Courts and Chancery Courts existed side by side, until in 1877, following the precedent set in England four years before, they were united in one Court administering the same system of jurisprudence, though for more convenience of business separated into Divisions to which different kinds of work are appropriated. The Common Law Division, when it assumes its final shape, will consist of the Lord Chief-Justice and nine other *puisne* judges; and the Chancery Division of the Lord Chancellor, the Master of the Rolls, and one other. The Court of Appeal will consist of the Lord Chancellor, the Lord Chief-Justice, and the Master of the Rolls (though these two rarely sit) and two Lords Justices. From the Court of Appeal cases go to the House of Lords as in England. Something must be said of the Land Judge, who has no absolute parallel in the English system. Many of the landowners of Ireland, perhaps most of them, had encumbered their properties with mortgages and second mortgages which, with or without additional charges for jointures and portions, sometimes left little or no margin for the nominal proprietors; and the potato famine of 1846, involving as it did an enormous depreciation in the values of estates, brought about over large breadths of the island something like a dislocation of the system of land ownership. An 'Encumbered Estates Court' was set up, under the jurisdiction of which lands thus entangled in title were bought and sold. The new purchasers took them freed from all encumbrances and possible claims of the past, while the purchase money was dealt with by the court according to the titles of

Land Judge.

those who were interested in it. Large areas thus passed into the free and unencumbered ownership of new proprietors; but it sometimes happened that sales were not found possible, at least upon reasonable terms, and the estates remained under the jurisdiction of the court, which administered them much in the same way as the Court of Chancery administered trusts under its supervision. The Encumbered Estates Court, without any radical change of functions, became the Landed Estates Court, and when the superior courts were united into one, this was incorporated into the Chancery Division.

Landlord and tenant.

The reference to the history of the Encumbered Estates Court naturally leads to another institution peculiar to Ireland. The Encumbered Estates Court arose out of complications between owners and mortgagees, but the relations between landlords and tenants have been equally difficult and equally provocative of special legislation. The law gave the Irish landlord the same powers as those of his English brother, including the right when not limited by contract to terminate a tenancy at short notice, and to evict the tenant from his holding. But the exercise of this right was tempered in England by habit and custom. The landlord everywhere accepted it as part of his duty to let the land so that it could be immediately cultivated, providing therefor necessary houses and buildings. If the land was not in this condition special terms were arranged with the tenant at the commencement of his occupancy; and, whilst the farmer was thus fairly set going, local customs frequently provided that on giving up his tenancy he should be compensated for outlay respecting his

crops, the benefit of which he had not exhausted. These customs, which were legally binding, were embodiments of guiding principles usually observed by landlord and tenant. In Ireland this kind of co-operation did not prevail. Land was let more or less bare of furniture, and when a tenancy was terminated there was no recognised obligation of compensation to the outgoing tenant.

Ulster tenant-right.

In the province of Ulster a custom prevailed, though even there it was not legally binding, of allowing a tenant to obtain from a new tenant, under the form of a sale of 'tenant-right,' something which was understood to be compensation for improvements, the newcomer again being protected from loss by another understanding that the rent should not be arbitrarily raised upon him. In the best-managed estates the transaction was arranged between the old tenant, the new tenant, and the landowner's agent, though disputes often arose as to the amount that could be recognised by the agent as purchase-money. Such a system even in its best form in Ulster is unfavourable to agriculture, whilst large and reckless evictions elsewhere produced the greatest social dissatisfaction.

Land bill.

In 1870 an Act was passed giving legal validity to the Ulster custom, and providing throughout Ireland a scale of compensation to be paid by a landlord to a tenant when the latter was arbitrarily disturbed, that is to say, was evicted for other than a reasonable cause as specified in the Act. This did not however solve the agrarian question. A series of bad harvests caused great distress and frequent inability to pay the rent that had been agreed upon. Under the Act of 1870 a failure to pay rent released the landlord from the payment of compensation for disturbance or

eviction, and some landlords seized the opportunity of relieving themselves from claims they had always resented. Agitation naturally followed upon the distress, and another Act in 1881 provided for the establishment of a court to which tenants might resort for the settlement of the rents of their holdings for fixed terms. Such applications became very numerous, and have involved an amount of labour and expense from which in later years an escape has been sought. The authors of the Act did not indeed regard the system they established as permanent. They looked for a time when tenants would naturally pass out of it, and revert under better conditions to the system of contract to regulate their holdings. There has been little prospect of the fulfilment of these expectations, but another solution of the difficulty has been invoked. This last is found in facilitating the sale of farms from landlords to tenants by advances of public money to be paid to the landlords on sales being effected, and to be repaid to the State by the tenants through annuities running over terms of years. More than twenty millions of money have been thus advanced, and over two million acres have been sold,[1] and so far the plan has worked with a large measure of satisfaction to the parties immediately concerned, and with the most insignificant loss to the State. But it can scarcely be said that a time of trial has been reached, and although hopes may be maintained that its success will be permanent, the possibility of a period of embarrassment cannot be disregarded.

Land commission.

Land purchase.

[1] The above figures include however lands formerly part of the endowment of the Irish Church which have been sold under the Church Acts.

Religion. Protestant Episcopal Church.

The reformation of the sixteenth century extended in form, but not in substance, to Ireland. The mass of the people remained in communion with the Church of Rome. The priests and bishops fulfilled the offices, and administered the sacraments of that Church under the severest difficulties of persecution and proscription. What the power of England was able to accomplish was the appropriation of buildings and endowments to a reformed order served by those who renounced the authority and repudiated some of the doctrine of Rome. It is not intended here to trace what followed, but in 1869 the status of the Protestant Church in Ireland was reduced to that of a voluntary organisation, and whilst its possession of its buildings was left undisturbed, its endowments, subject to the vested interests of the clergy in possession, were withdrawn and converted into a fund which has been applied, and is still in process of application, towards many Irish uses. The Protestant Episcopal Church in Ireland has been organised much on the same lines as the sister churches in Canada or Australia or the United States. As a voluntary association it has no special privileges, and calls for no special notice. Much the same may be said of the Presbyterian Church, which has a large number of adherents in Ulster and as a free society looks to the Church of Scotland much as the disestablished Irish Church looks to the Church of England.

Roman Catholic Church.

As has already been intimated, the mass of the people remained and remain in communion with the Church of Rome, and in the eye of the law this is also a vast voluntary society. There is no *concordat* between the State and the Pope. If any communica-

tions pass between the Government and the Papacy, they are obscure and circuitous. A particular Pope may wish to choose Bishops who shall be *personæ gratæ* to the Government, and another Pope may make his selection with total disregard of this principle. The Roman Church has indeed no public endowments or privileges that would justify any pretension on the part of the Ministers of the Crown to make any representation of their wishes to the Holy See. There is a law to facilitate the acquisition of sites for churches and presbyteries, but it contains no trace of favour. There is another law touching the administration of religious gifts. This is also of a general character. The one subject on which the State comes into connection, if not into collision, with the Church of Rome is education. Under the influence of Mr. Pitt large grants were made — subsequently augmented by Sir Robert Peel — for the establishment of a college for the education of youths destined for orders in the Church of Rome, partly as a set-off against the Protestant establishment; and when the Protestant Church was disestablished and disendowed, a capital sum was assigned for the future maintenance of this college which was left entirely free, as it had been free before, from State interference and control. This provision for the education of priests seems to have been so far satisfactory that little or no complaint is heard respecting it. It is over primary education and the higher University Education that controversies have arisen. As regards the former, a system of national education was established in 1833, wholly at the public expense, in a form intended to admit the children of parents of all creeds.

Education.

Maynooth.

Primary education.

Roman Catholic and Protestant prelates joined to promote this system, and a Board of Education was established half Catholic and half Protestant, on which they sat side by side. Class-books of reading and instruction were drawn up with common agreement. Jealousies however arose of the sufficiency of the religious education thus provided, and accusations were made that the system was abused in the interests of Protestantism. New reading-books have been adopted, and many modifications made in the national system generally in the direction of sectarianism, but it has not been found possible to secure a succession of Roman Catholic prelates on the Board, although Roman Catholic laymen continue to be members. As at present organised the great majority of the schools in Ireland are under the management of the priests of the parishes where they are found, and the fullest liberty of religious teaching is allowed, subject to the proviso that it takes place in definite hours according to a fixed time-table. The children of Protestants are allowed to withdraw during this period when instruction is supplemented by a display of symbols on the walls. Two conditions still insisted upon are the satisfaction by the teachers of certain standards of efficiency and the non-sectarian character of the instruction except during the hours of religious teaching. These two conditions prevent any State recognition of the work of the Christian Brethren, and may perhaps hinder the appearance of other teaching orders. The system of national education as it has been modified by successive changes appears to be fairly satisfactory. The organisation of University education is the subject of bitter controversy. Elizabeth estab-

University education.

lished a University in Dublin, and Trinity College within it, as purely Protestant institutions, and University and College so remained with teaching and endowments available for Protestants only, down to the end of the last century, when Mr. Pitt made the teaching but not the endowment accessible to Catholic students. A small number of the sons of Catholic laymen entered Trinity College, but the College and the University remained exclusively under Protestant control and the proportion of Catholic students is insignificant. As years went by it showed no tendency to increase, and Sir Robert Peel in 1845 established three Queen's Colleges at Belfast, Cork, and Galway, and united them in a University called the Queen's University. Appropriate buildings and a complete organisation of professors were provided. The instruction comprised all the curriculum of a University education except that of a Divinity School, and the different religious bodies were invited to set up Halls of residence in each college where students might live and receive the special teaching of their churches under the superintendence of Deans appointed by the several bodies. The establishment of these colleges was hailed at the time with satisfaction by a majority of the Roman Catholic prelates, and Roman Catholic students entered at Cork and Galway, and in a smaller proportion at Belfast. But the conception of mixed education was denounced from the first as godless by at least one Roman Catholic archbishop, and the antagonism grew with the increased activity of sectarian feeling which has characterised the latter half of the nineteenth century. In 1873 Mr. Gladstone attempted to reconstruct

the University system of Ireland, but his Bill was defeated in the House of Commons, and the immediate result of his undertaking was the passing of an Act brought in by Mr. Fawcett, throwing open the scholarships and fellowships of Trinity College to all, irrespective of creed. The Disestablishment Act of 1869 had already made a separate provision for the Divinity School of the University, although it remained locally connected with Trinity College, and the effect of Mr. Fawcett's Act following on the previous legislation was to open Trinity College absolutely to students of all kinds, so that its future character depended upon the character of the students and graduates who might capture it. There remained however an immediate predominance to the influence of which all incoming students must be subjected, and the process of conversion, necessarily slow and difficult, was not rendered less so by the refusal of the Catholic hierarchy to countenance the entrance of Catholic students. Further legislation was passed in 1877, when the Queen's University was reorganised under the name of the Royal University so as to admit to its degrees students outside the Queen's Colleges, and was endowed with fellowships tenable at other institutions so as to be available for the assistance of teachers in purely Roman Catholic seminaries. This legislation cannot however be regarded as other than a makeshift, for what may follow is most uncertain. A demand for the establishment of a Roman Catholic University has with some vagueness as to its meaning been supported in Parliament by men of different parties, but currents and countercurrents, denominational and undenominational,

Royal University.

rage around the subject; and there is as yet no promise of an issue from their eddies.

Local government in Ireland

Ireland, like the rest of the kingdom, is divided into parishes and counties, but except as an area of ecclesiastical organisation the parish seems never to have had any importance. It is little more than a geographical expression, like those provinces into which the counties of Ireland are aggregated. The counties are however divided into baronies, which have been taxable units with modified powers of self-taxation. The administrative power within each county has been the Grand Jury — a body corresponding to the magistrates in Quarter Sessions in England; and within each barony Presentment Sessions have been held, attended by the magistrates and a sprinkling of the largest ratepayers in the barony, which had the power of making assessments, and of pledging the baronial rates for baronial purposes.

A Poor Law was brought into existence in 1838. Poor Law areas were marked out and Union Workhouses built and placed under the administration of elected and *ex officio* Guardians much as in England, except that it was provided that the *ex officio* Guardians should be one-third (afterwards increased to one-half) of the whole number. It was also provided that no poor rate should be levied on holdings under £4, and that the rates levied should be equally divided between occupier and owner. The general administration of the poor law was subject to the control of a Board in Dublin, which had power to supersede the local Board of Guardians, if persistent in maladministration, and to appoint paid officials (Vice-Guardians) to discharge

their functions. A few ancient boroughs existed, but most of the smaller towns were organised under Acts passed in 1840 and 1854, and were governed by elected Town Commissioners.

newly organised in 1898.

All these organisations have undergone radical changes, if they have not been entirely swept away by the Act of 1898. Under it elected County Councils have taken the place of the Grand Jury in the government of counties, which, however, are divided into districts returning two councillors apiece instead of one as in England. District Councils have been established, and in the constitution of Boards of Guardians *ex officio* members have disappeared, and plural voting has been abolished in the election of ordinary members. The household franchise has been established in the boroughs, and the towns under Town Commissioners have been organised as boroughs. It has been left to the boroughs themselves to determine whether the members of their councils shall be elected all together every third year or shall be elected in thirds every year. The local government of Ireland has thus been reconstructed on the most democratic basis. Another provision connected with the change must be noticed. It has been mentioned that the poor-rate was divided equally between the occupier and the owner. A grant was made by the Imperial Parliament of an amount equal to the average that had been paid by landowners in the three years preceding the Act; and this sum became a kind of endowment for the use of the rating authorities of the future, whilst the landlords were relieved from their obligation to repay half the rates levied. It was thought that this change,

which practically imposed upon those who levied the rates the burden of paying them, would check any disposition towards extravagance on the part of popularly-elected bodies who are thus debarred from throwing upon others the obligation of providing for their wants.

Part III

PARLIAMENT IN RELATION TO THE EMPIRE AND TO FOREIGN POWERS

CHAPTER I

ANCIENT CROWN POSSESSIONS: (1) CHANNEL ISLANDS, (2) ISLE OF MAN

Historical relation of Channel Islands to English Crown.

THE Channel Islands differ from all other possessions of the Crown outside the United Kingdom in this — that they were not attached to it by conquest or occupation but belonged to the Conqueror as part of the Duchy of Normandy when he established by conquest his title to the Kingdom of England. They were brought into connection with England as being under the same head, but were not made subject or subordinate to it, and the rule of the islands as of the rest of the Duchy long remained apart from the rule of England. In respect therefore to the original circumstances of the connection, the islands show some parallelism to Hanover from the accession of George I. to the accession of the Queen. For more than a century our kings were at first Electors and then Kings of Hanover by a title wholly distinct from their title to the British Crown; and the principles, method, and conduct of the government of the two dominions were wholly separate. The Elector of Hanover might be at peace with a power with whom the King of Great Britain and Ireland was at war and *vice versa;* although experience showed how easy it was for each to become

embroiled in the quarrels of the other. But though the Channel Islands are an independent possession of the wearer of the Crown they were never treated otherwise than as sharers of England's fortunes. In the earlier centuries the will of the one-man ruler was the prime factor of government both in Kingdom and Duchy, and those who were at war with him attacked indiscriminately all his possessions. Later on, while parliamentary power was growing, the Norman possessions of the Crown dwindled to the islands of the Channel, and though a feeble attempt was made under Edward IV. with the papal sanction to give these islands the immunity of free ports, the claim to neutrality was never effective and gradually vanished. Nevertheless the Channel Islands have always occupied a peculiar position as dependent upon the Crown rather than upon Parliament; and such authority as Parliament has obtained is exercised through the Crown behind which it stands. The constitutional position seems to be that the Crown as inheritor of the Duchy governs the islands through the organisation to be immediately described; but the autocratic functions which the Duke once discharged at his personal discretion are now directed and inspired by the Administration which, through its possession of the confidence of Parliament, conducts the government of the United Kingdom. Parliamentary government has been very slightly developed in the island. Responsible Ministers are not found within them. The limitations of the power of their ruler have altered but little in form or in substance. The change which has occurred lies in the substitution of a parliamentary mind for the mind of an autocrat. The orders that

Its results on their form of government.

are accepted and obeyed come from a different spring of inspiration; and it must be counted as proof of the singular discretion which has inspired them that they have excited so little resentment or dissatisfaction.

Legislature of Jersey. Its composition and powers.

Jersey has a Legislature, but its work is rather that of registering than of making laws. It consists of the members of the Royal Court, who as such have special duties, and of twenty-four other members; and the whole Assembly is called the States.

The Royal Court consists of the Bailiff appointed by the Crown who is, under the Lieutenant-Governor, the head of the Executive of the island, and of twelve jurats elected for life by the ratepayers, one for each parish in the island. The remaining twenty-four members of the States are the rectors of the twelve parishes which make up Jersey and the constable for each parish elected by its chief property-holders. When an Act affecting Jersey is passed by the Imperial Parliament it is communicated by the Home Secretary as Minister of the Crown for registration by the Royal Court; but the Crown in Council can by order apply any Act to Jersey, and can even make an independent Order in Council affecting the island, and such orders, whether applying Acts of Parliament or original in their nature, are also transmitted for registration by the Royal Court. It is laid down that this registration is not necessary to make such Acts and Orders operative in Jersey; and this amounts to a declaration that it is within the prerogative of the Crown as inheriting the Duchy to make a law for the island; in accordance with which view it may be held that an Act of Parliament naming Jersey binds it, not as something to which King, Lords, and

Commons have agreed, but as an order adopted by the Crown and enforced by its prerogative. Registration is moreover so much a matter of course that the question of its importance is scarcely practical, and a general contentment admits of almost complete autocracy. The States can also pass statutes for submission to and adoption by the Crown in Council, which indeed, unless expressly disallowed, are valid for a period of three years even without such submission and adoption. It remains to add that, apart from such laws as are enacted in the manner already detailed, the Common Law of the island is the old feudal law of Normandy, and that the Royal Court already mentioned is the High Court of Judicature of the island before which all causes civil and criminal can be taken. For the dispatch of business it is divided into five chambers, and the Bailiff and the two jurats suffice to make a chamber, though a party to a dispute brought before such a tribunal can insist upon its being carried to a chamber with not less than seven jurats. From a final decision of the Royal Court an appeal can be carried to the Queen in Council. The Bailiff collects the decision of the jurats and although bound to pronounce it has no voice in the judgment unless the jurats are equally divided. Each parish in the island has its court presided over by its Constable, and criminal proceedings are held before the Constable and his officers, numbering twelve, seven of whom must concur in a verdict of guilty, but an accused person can appeal from this finding to a fresh trial before the Constable and a jury of twenty-four non-officials, and he is acquitted if as many as five out of the twenty-four pronounce in his favour.

Judicature of Jersey.

It will be seen that while the laws of Jersey may be modified and new laws enacted by a purely external authority and the States can only formulate provisional statutes having force for a limited term unless approved and ratified by the same external authority, the judges of the island are elected to their offices and the administration of justice qualifies what would otherwise appear to be an irresponsible government. The revenues of the island derived from greater tithes, seigneural dues, rents and tolls, and a few Customs duties suffice to meet the ordinary charges of administration so that no difficulties are provoked by resort to taxation, and in connection with this it must be observed that the cost of the military force in the island is defrayed out of the war budget of the United Kingdom.

Guernsey.

The constitution of Guernsey is fundamentally much the same as that of Jersey, but the jurats composing the 'Chefs Plaids' corresponding to the Royal Court are not elected directly by the ratepayers but by process of double election. The persons associated with them in making up the legislative States are also indirectly elected and are no more than fifteen in number. The 'Chefs Plaids,' unlike the Royal Court of Jersey, have a power of making bylaws or 'Ordonnances' of themselves, and they submit to the members associated with them other projects of law and, within defined limits, of taxation, which on being approved by the latter are again submitted to the Crown in Council. There is thus even less direct popular representation in Guernsey than in Jersey, and the power of law-making is more restricted. The basis of the Common Law is the same throughout the Channel Islands, and the judi-

cature in Guernsey is also the same as that of Jersey although it is somewhat differently divided into particular chambers.

Isle of Man. Its history.

The Isle of Man differs in the circumstances of its history from the Channel Islands, and its present organisation shows a more considerable parliamentary development. By the end of the fourteenth century the King of England had successfully asserted his feudal superiority, but the island remained a fief held of the English Crown without any interference on the part of the king in its internal government till 1765. For the greater part of this period the house of Stanley were its Lords, from whom it descended to the Dukes of Athole, until in the year just named it was surrendered by the then Duke by way of sale to the King. The power of government of the mesne-lord thus became vested directly in the English Crown, a change consummated in 1825 by the sale of the Duke's manorial and other rights, including those of patronage. The constitution of the island has been radically changed in recent years, but substantial traces of the old feudal relations still exist. The Lords of Man exercised an unqualified right of imposing Customs duties, which had in fact been so moderate as to make the island a smuggling depot to the injury of the British revenue; a circumstance which furnished a motive for its acquisition by purchase. As the right to impose these duties passed to the Crown it became vested in Parliament, though it has not been used without remonstrances and protests on the part of the islanders.

Transferred in 1765 to English Crown.

Settlement of revenue.

These remonstrances have had their influence in the settlement which now prevails, under which alterations

of duties are in fact mutually agreed upon, the Manx Legislature having been of late invited to take the initiative. Under this settlement the cost of the government of the island is made a first charge on the Customs revenue, and it will be seen that the islanders have some voice in determining this cost. Sundry charges for definite public works follow, and then comes the payment of £10,000 to the Imperial Exchequer, and any balance remaining after this payment must be applied to the benefit of the island. The sum of £10,000 historically represents the net revenue enjoyed by the Lords of Man; but it must rather be defended as a contribution on the part of the island to the cost of the Imperial protection. The income from Customs duties forms practically the bulk of the public revenue of the island, and the fact that these duties have always been settled by superior authority has markedly influenced the constitutional development of the island. A democratic leaven has however made its way in 'Man.' Under its feudal organisation laws seem to have been made by the Lord, though they were registered and promulgated in the Tynwald or some branch of it — an ancient body with judicial rather than legislative functions. The Lord's right to make laws naturally passed to Parliament, and is still vested in it; but, though never renounced, it is not now directly exercised save in respect of Customs duties, harbour dues, and like matters. The Tynwald has been transformed into a local Parliament, and laws are practically made by it; though before being finally promulgated by this body they receive the assent of the Crown in Council. The actual government is vested in a Lieutenant-Governor

Court of Tynwald transferred into a local Parliament.

appointed by the Crown. The Tynwald consists of two

Council. branches. In the first or Council the Governor himself sits, and the other members are the Bishop, two Deemsters or Judges, the Archdeacon, and four or five other officials, all appointed by the Crown except one appointed by the Bishop. It will be seen that this body is wholly official, but half its members do not hold office at the pleasure of the Crown, and its votes are habitually given free from any suggestion of official obligation. The second branch of the Tynwald or House of Keys consists of twenty-four members, twelve elected three apiece by four 'sheadings' (county constituencies) and four two apiece by two sheadings; five by the town of Douglas divided into two constituencies, one returning two and the other three members; and the remaining three, one apiece by three other towns. The qualification is £4 ownership or occupation whether in town or sheading, and unmarried women and widows possess the franchise like men.

House of Keys.

Procedure. Bills can be introduced into either branch of the Legislature, but it appears that in fact they generally originate in the Council as Government proposals. In the event of a disagreement between the two branches a conference is held in the Council Chamber which some half-dozen members of the House of Keys attend; and it is said that after a discussion between the Governor on the one side and the representatives of the Keys on the other an agreement is generally effected. A Bill as passed by both branches is transmitted to the Home Secretary, and after approval by the Crown in Council is promulgated at an open-air meeting of the

Tynwald, annually held with every traditional ceremonial solemnity on the 5th of July.[1]

In addition to the legislative work thus described, the Tynwald has other duties in the discharge of which the members of its two branches sit together. The first stage of what is known in the Imperial Parliament as Private Bill legislation is generally thus discharged in full Tynwald, otherwise the Tynwald Court. When application is made to proceed with a Bill of this kind, the Court hears the application in the first place, and if it approves of further progress, the Governor orders in which House the Bill shall be introduced. What is more important, all financial proposals must be discussed in the Tynwald Court. No motion for increased expenditure can be made without the consent of the Governor, and when made it must be discussed by Council and Keys sitting together, though when the question is put to the vote each branch expresses its judgment separately.

In some cases the branches sit together.

It will be seen that nothing resembling the principle of ministerial responsibility exists in the Isle of Man. The Parliament of the United Kingdom regulates its Customs tariff and thus lays the foundation of its financial administration. No expenditure can be incurred except on the initiation of the Governor who is the nominee of the Crown, and almost all the legislation of the island originates with him and his legal adviser. He has moreover a relatively extensive and irresponsible exercise of patronage. The general effect of the government is in many respects similar to that which is found in the Colonies to which we shall presently refer

No ministerial responsibility.

[1] Midsummer day before the change of style in the last century.

as Crown Colonies; but its organisation differs from that of most, if not of all, in the existence of a Second Chamber which is purely representative and elective. It is no small proof of the intelligence and sympathy with which the government of the Isle of Man has been administered on the one side, and of the moderation and good temper of the governed on the other, that a system which suggests a possibility of many difficulties has in fact been productive of few or none. It may almost be said that as far as the Imperial Parliament is concerned the Isle of Man possesses the coveted advantage of having no history.

CHAPTER II

CROWN COLONIES

Bases of British authority in the colonies.

THE Channel Islands were brought into connection with England in the train of the Conqueror, and their political situation retains strong traces of this historical fact. If they cannot be said to be now connected with the United Kingdom only by the link of the Crown it must be because Parliament, having absorbed the direction of the functions of the Crown, has, through the inheritors of the Duchy whom it directs, made the islands subordinate to its own authority by way of substitution for the authority of the Duke. All the other colonies and dependencies of the United Kingdom have a different origin. They have been won by the power of Britain as the result of war or of discovery, and home-born subjects of the Crown have passed into them, so that sometimes they and their descendants become practically the exclusive occupants of the land, and sometimes so that they are dwellers transitory or permanent with strange races among whom they move as the representatives, or even as the agents, of the governing power. These outlying possessions, when acquired by discovery, have either been claimed by recognised officers of the Crown, or else by subjects who, without any express commission, have formally declared that the new-discovered lands had become

British territory. But the proclamation of dominion, whether made officially or otherwise, can be repudiated by the Crown if so advised. Occasions have not been wanting when the addition of new territories has been refused from home, as the sovereignty of Sarawak was rejected and the premature annexation of New Guinea repudiated. At the same time the old doctrine *nemo potest exuere patriam* prevailed in our law down to the passage of the Naturalisation Act, 1870; and as it was impossible for British subjects to renounce their allegiance to the Crown even when they passed into foreign states it was *a fortiori* impossible for British subjects settling in an unoccupied land to keep it independent of the British Empire. It was on this ground that we insisted, even to the length of waging war to enforce our claims, that emigrant Dutch farmers from the Cape could not by migration elsewhere set up an independent community of their own. The necessity of recognising the movements of modern life, especially that under which so many of the Queen's subjects entered the United States and accepted there the status of citizenship, compelled the abandonment of the old maxim; and it must now be admitted that British sovereignty is not carried everywhere and for ever by British-born subjects.

Rights of British settlers.

The old doctrine that a Briton could in no way divest himself of his nationality was sometimes found connected with a correlative principle that wherever he went he carried his privileges with him, and that the fundamental safeguards of British law and the right to British institutions accompany the settler everywhere.

Under this doctrine a Briton could always claim trial by jury and freedom from arbitrary arrest; but its interpretation was carried much further than this, for it was asserted that Britons were entitled to the protection of a representative government. The assertion can pass only through some confusion of the claims that may be sustained in a moral enquiry with the privileges that can be enforced by legal process, and a strict analysis requires us to dismiss it as historically unsound and misleading. When it is remembered what was the character of representative government in Great Britain itself at the time this view was propounded, its boldness becomes evident; and in truth it is not supported by any tenable reading of the history of British colonisation.[1] When colonisation first began, British possessions over-seas were held to be within the regulating power of the Crown, at that time scarcely hampered at home by parliamentary limitation, and were in practice necessarily treated in accordance with that view. At a later time, when every act of the Crown was effected under the advice of Ministers, and Ministers became responsible to Parliament, British possessions over-seas naturally came within the regulating power of Parliament, and even where no Act of Parliament specifically ordained the form of the constitution of a particular possession, its government was not the less approved and maintained with parliamentary sanction. Even now, when so many of our colonies have all the privileges of self-government, and the number of those so emancipated and the degree of their emancipation must

[1] See Lord Mansfield's judgment in Campbell *v.* Hall (1774) in *Lofft's Reports* or Howell's *State Trials*, vol. xx.

be expected to increase continuously, it would be a misuse of words to say that British colonists carry with them the right to representative government. Wherever it is established, it is set up by the express authority of the Parliament at home clothed in an Act, and although Parliament would not, and it may be said, could not, withhold representative government where fit conditions exist, it is the formal duty of Parliament itself to recognise the fitness of the conditions and thereupon to legislate. It may be argued that if Parliament could not withhold its sanction to the institution of representative government within any colony, that colony has a right to receive it; just as a son has a right to liberty where the father could not refuse it. But the analogy is imperfect since there is no legal authority to overrule the relation of Parliament and Colony, as there is to overrule the relation of father and son. The phrase may however be allowed to pass, if its looseness is clearly understood; but it will be seen how wide removed it is when properly interpreted from the broad assertion that British colonists have everywhere the right to representative government.

Original administration of colonies.

It has been said that at the outset the colonies were within the regulation of the Crown. The Atlantic States of the American Union were in their origin so many colonies created by and organised under charters of successive kings and queens. Our earliest possessions in the West Indian islands, though acquired by conquest and not by settlement, were similarly administered under a royal charter. There were many variations between the several constitutions, but the general type was that of a Governor sent from England with a

Council of officials set about him, and an Assembly or even two Houses of Assembly most variously constituted, and generally containing some popular element to assist the Government in law-making. Elsewhere, in colonies which may perhaps be roughly discriminated as colonies of adventure rather than settlement, charters were given to Companies to trade and to explore, and to govern so far as government was required to complete their enterprises.

Government of Crown Colonies.

It is not intended to review here the several stages of development through which the present colonial system has grown out of the past. Some historical references may be fitting and necessary when cases are separately dealt with. It is enough now to say that existing colonies may be divided into two groups: (1) that of the self-governing colonies with representative legislatures and Ministers responsible to them; (2) that of Crown Colonies which are governed directly by the Crown (under the advice that is of the responsible Minister, the Secretary of State for the Colonies), acting through some agency the details of which vary from colony to colony. A large number — the largest number — of these Crown Colonies lie within or near the Tropics, and are inhabited by masses of natives of different races from our own with a sprinkling of persons of British origin. In the majority of cases these latter have come for a few years of energetic strength to superintend local trades and industries without any intention of remaining, still less of leaving their families to succeed them, but in a few instances, notably in the West Indian islands, British immigrants remained and have left descendants through several generations.

The difficulty of erecting representative institutions where the British element in the population, whether temporary or permanent, is but a handful is obvious. Other cases of Crown Colonies such as those to be immediately noticed are really military stations where representative institutions are equally inapplicable, though for different reasons.

Gibraltar. Gibraltar is the first of the colonies to which reference has just been made. Its Governor, who is also the Commander of the troops stationed there, is the Government in himself. He is the head of every branch of the administration, and he makes ordinances which are laws. It is a great military station and a calling-place for ships trading to the Mediterranean and the East, and it has no other interests and no other population than such as these two facts would suggest. Any other inhabitants beside the military forces and those who live by supplying the wants of passing ships are those who, stimulated by the fact that Gibraltar is a free port, make it a station for a smuggling trade into Spain. The government of such a population is not difficult, especially in view of its easy communications with England; and in fact no more serious question ever arises than some dispute over the policy of a police or sanitary regulation.

Malta. Malta is a station different from Gibraltar in having a fairly large independent population, of a very mixed breed in the rural districts, where their tongue, a bastard Arabic, attests the mixture; and of Italians speaking Italian in the towns. The inhabitants however, apart from the British military forces and some Jews and Greeks who have come there for trading pur-

poses, are united in their Catholic character with a completely organised hierarchy; whilst a curious order of nobility largely of papal origin is found among the laymen of the professional and landowning classes. It is evident that in the government of such a population difficulties may easily arise, although the necessity of maintaining the supremacy of the military authority in the island may sometimes afford a rough-and-ready solution of them. The Governor, the head of the military forces as at Gibraltar, has an Executive Council composed of his chief officials, and a Legislative Council, partly of nominated official and partly of elected members. The latter if united can easily outvote the former, but the Queen in Council can exercise reserve powers, issuing an Order which has the force of law in the island, and by this means the action of the representative council may be completely overridden. The disputes which have arisen have mainly turned on matters of education, marriage, etc., where ecclesiastical ideals were in conflict with the predominant principles of British policy; but a financial dispute of some bitterness prevailed for many years over a corn-tax in which the Government supported by the landowners was in conflict with the more popular elements. Still more recently the elected members of the Legislative Council hesitated to sanction, if they did not refuse, the taxes asked for by the Government to meet the estimates of expenditure, and recourse was had (in 1899) to the power of the Queen in Council to issue an Order imposing these taxes. Difficulties have also from time to time arisen in relation to language. Italian only was at one time employed in the primary schools; but the

bastard Arabic referred to as the vernacular of the rural population has been more recently permitted as a vehicle of instruction. The struggle between English and Italian in the law-courts has finally resulted in a proclamation declaring that English shall be substituted for Italian after an interval of fifteen years, but a declaration of intention so long beforehand suggests the proverbial chances between the cup and the lip.

Cyprus.

Cyprus is a third illustration of a Crown Colony which was intended, when first taken, to be constituted a military station like Gibraltar and Malta; but this design was never fulfilled, and may be described as set aside, though not perhaps as permanently abandoned. It differs from other possessions in being held under a kind of terminable lease from the Sultan of Turkey; but it may be assumed that the Sultan will never be allowed to resume possession of it. There is however a rental attached to the lease of more than £90,000 a year; that amount being taken at the time when the lease was agreed upon as the average tribute paid by the Cypriotes to the Sultan. It is only in very prosperous years that such a tax can be raised in the island in excess of necessary expenditure; and the payment of the tribute has involved frequent subvention from the British Treasury amounting on an average to one-third of the total. It has been argued that the Sultan had no moral claim to so large a tribute, and that we are under no moral obligation to pay it,[1] and indeed that we

[1] In fact it is not paid to the Sultan. It is applied to meet the charge on a loan to Turkey which France and England guaranteed during the Crimean War, the duty of meeting which the Sultan has for many years neglected. When that debt is extinguished a serious question may arise as to the policy of withholding from the Sultan such part of the tribute as seems unjustifiable.

should be parties to an immoral claim in exacting it. But there is a clear contract to pay the total whilst we remain in possession; and no one suggests giving up possession as a way of escaping the burden. The subventions we make are rather part of the price we pay as the cost of the transaction than any act of grace and favour to the Cypriotes. Another incident connected with the taking over of Cyprus may be noticed. As in the other Turkish dominions the Conventions ran within it giving foreign powers consular jurisdictions on behalf of their subjects; but when we took possession these consular jurisdictions silently disappeared. The precedent has been since followed by the French in Tunis; but it seems to have raised a new question of international law, which cannot yet be recognised as settled. Different powers have acquired leases of portions of China, and it is not agreed how far the treaty obligations of China are suspended or superseded in the places within these treaties. The political problem involved in the government of Cyprus is that of inducing peace if not co-operation between Moslems and Christians, Turks and Greeks. The Governor is assisted by an Executive Council composed of his chief officials, and there is also a consultative Assembly of eighteen members in which representation of the two populations of the island is secured by allowing the Christians to elect nine members and the Mohammedans three, the remaining six being official, an arrangement under which the official members in combination with the Mohammedan representatives can check any tendency to injustice on the part of the majority. The Greek element of the population is politically the more

active, and complaints are occasionally heard from it of the amount of revenue raised and the little work done; but in fact much has been effected in improving the material conditions of life especially as regards sanitation, road-making, and the mitigation of plagues of locusts to which the island is subject, while justice and order are secured by a British magistracy and an organised police.

West African dependencies.

The Crown Colonies of Europe are military stations. Those of the West Coast of Africa are trade stations under the control of Governors assisted by Executive Councils without any suggestion of representative institutions, which indeed the circumstances of the territories make impossible. Most of these settlements were originally made in the interests of the slave trade, and after the abolition of that traffic their commerce was so unsatisfactory and their development so unpromising that little more than thirty years ago a strong Committee of the House of Commons unanimously recommended their abandonment. Different views have of late prevailed, and vast possibilities are promised of commerce with the interior; but the political organisation of the coast stations remains unchanged. An interesting experiment has been tried on the Niger which may prove a precedent elsewhere. In 1886 a Company was chartered with powers of settlement, trading, and government on the Niger Coast and Hinterland which at some expense reduced a considerable region to order under its administration, and developed a trade returning a moderate steady rate of profit on the capital appropriated to that part of its enterprise. In 1899 the pioneering work of the Com-

Royal Niger Company.

pany was regarded as completed, and its powers of administration and government withdrawn, whilst it was left to carry on its trade without any special privileges. Compensation was made to it for the expenditure which it had incurred in bringing the country under a settled administration. Whether the result is worth its cost is a question that has been disputed; but the history is an illustration of one of the last experiments in colonisation through Chartered Companies.

South Africa Company.

Another example of the same process is presented in South Africa, where a Company was chartered in 1889 with powers of organisation and government over a very extended area. This charter, like that of the Niger Company, was granted subject to modifications or revocation at the will of the Crown, instead of for a fixed term of years, as in older examples, and it has already been modified by the introduction on one side of stricter control by a Crown officer and on the other by the introduction of an elementary consultative Assembly elected by white colonists. The future of this experiment depends upon economic conditions which are as yet uncertain, but procedure by way of a Chartered Company is defended, and possibly justified, because (1) white adventurers will swarm over the frontiers of settled colonies in any case; (2) such adventurers when isolated are too few and too scattered to organise any administration of their own, and individuals have no sense of responsibility overruling their acts by reference to others; (3) the attempt to follow up such adventurers by an administration organised from at home would be very costly, and yet would be apt to break down through the difficulty of finding officers that could

Use of Chartered Companies.

be trusted for such work, while the adjacent colony beyond whose frontiers adventurers roam would not undertake the expense of following them; and lastly (4), delegation of powers of government to a Chartered Company willing to accept the trust, though not free from peril of abuse, yet offers as good a chance as any other, since it fastens upon a definite number of known persons responsibilities they cannot ignore.

Crown Colonies among civilised native races.

Another class of Crown Colonies consists of countries fully peopled with native races wholly occupied in the pursuits of industry and commerce, and so far possibly attaining a high degree of civilisation, but from differences of race or character not recognised as qualified to co-operate, except perhaps in subordinate capacities, in the functions of government. Of these, Ceylon is the largest; but others are Mauritius, Hong Kong, Straits Settlements, Fiji, Demarara (British Guiana), and the West Indies; though Mauritius, Demarara, and the West Indies may be differentiated from the others as possessing a limited white population resident from generation to generation. The presence of this white element in the population has in so far affected the constitutions of these colonies that it is convenient to consider them separately, and to direct attention first to the type of which Ceylon is the most important example. In this class, a Governor appointed by the Crown is assisted by an Executive Council mainly if not wholly consisting of official members, and the will of the Governor and the Council (which latter through the Governor's control of official members is but another expression of his own will) is supreme throughout the colony. A Judiciary is indeed generally found supply-

Ceylon represents one class.

ing some elements of independence, and so far exercising, perhaps insensibly, a check upon a power otherwise autocratic. Another check is indeed intended to be furnished by the Legislative Council where it exists, but this is always dominated by the official members, and the others, the nominated members, though chosen to represent important local interests, are generally docile instruments of the Governor's policy. The personality of the Governor is an element of importance in these colonies; much depends on his vigour or supineness; but he is directed in his principal acts by the Secretary of State at home, in whose bureau the records of former Governors are stored and who, subject to his responsibility to Parliament, really governs the colony. White officials are at the head of the several departments of administration. Subordinate appointments are frequently filled by natives, and in Ceylon natives have been advanced to the judicial bench. In the case of Ceylon too, the size of the island makes necessary a numerous civil service; and this is recruited by successful candidates in competitive examinations at home. The general result is an administration of which the Governor is the managing director, which occupies itself with all that concerns the moral and material well-being of the inhabitants. Special local work may be delegated to local Commissions, constituted for the purpose; but in general, harbours, railways, roads, irrigation, immigration, sanitation, and education are all looked after by the Government. The co-operation of natives may receive further development in the future. It exists at present on a small scale in the organisation of the Civil

Service, and in the constitution of the local Commissions to which reference has been made.[1]

Crown Colonies with representative institutions.

The colonies Mauritius, Demarara, and the West Indian islands, especially Jamaica and Barbados, where there are white populations resident from generation to generation, are Crown Colonies like those already noticed, in that they are governed by a Governor with an Executive Council whose authority is supreme, and who is inspired and directed by the Secretary of State. But the Governors were from early times associated with representative institutions which control the making of laws, and sometimes claim to control the taxation of the colonies. Had the latter claim been ever effectually established, responsible government must have followed; but the executive officers of the Governor have always remained independent of these local Assemblies, and when it has been found impossible to overcome the latter by other means, they have been suppressed by the authority of the Imperial Parliament. It must be remembered that, when the several constitutions of the West Indian islands were called into existence in the second half of the seventeenth century, the rights and privileges of the House of Commons were not established as they are to-day, and the representative Assemblies then created remained down to the abolition of negro slavery in 1834 strictly oligarchical in their character. The same limitation of class applied to the peculiar consultative bodies which originated in Demarara when a Dutch possession, and were maintained after it became a British dependency. High property qualifications helped to preserve the predominance of whites

[1] See *post*, on the Government of India.

after negro enfranchisement, and to this, Demarara, Barbados, and the Bahamas owe the present existence of their several constitutions. Jamaica has been the most conspicuous example of the breakdown of an original constitution. In 1838 the position became so desperate that Lord Melbourne's government submitted a Bill to the Imperial Parliament for the suspension of the constitution of Jamaica. The Bill was so ill-supported as to provoke a ministerial crisis resulting in Lord Melbourne's resignation. Though the difficulty both at home and in the island was for the time surmounted, the Jamaica constitution broke down again in 1866, and on this occasion was entirely superseded. In the distraction of that time the representative Assembly consented to its own supersession, and for some sixteen years after Jamaica was governed by a Governor and a nominative Council. Under the colonial administration of Lord Derby a mixed system was established with a Legislative Assembly containing a majority of elected members, but there was no admission of the principle of ministerial responsibility and the actual government remained that of a Crown Colony. Another period of sixteen years passed in which, despite some minor changes, the same system was maintained of Crown government under the direction of the Colonial Office checked by the presence of the majority of elected members in the Assembly. This period closed in financial embarrassment which was perhaps an inevitable result of the economic condition of the island; but the colonial government and the elected members in mutual recrimination threw the blame on each other, and in 1899–1900 Mr. Chamberlain resolved to take a new

Jamaica an example.

departure and place the nominated members of the Assembly in a majority. The controversy cannot be said to be closed, and the vicissitudes of government in Jamaica remain an illustrative study of the difficulties of a situation where the character of the mass of the population forbids the establishment of thoroughly democratic principles and the determination of authority oscillates between government from at home and government by a privileged and practically racial minority of the inhabitants of the island.

Political future of West Indies.

The existing political organisation of the rest of the West Indian islands cannot be regarded as permanent any more than that of Jamaica. Circumstances almost accidental have produced great variations among these dependencies of the Crown; but everywhere we find that the real power is vested in the Governor as representative of the Secretary of State, although his authority may apparently be tempered by the existence of Assemblies independent in character. Some movement must be expected throughout the West Indies either to a clearer establishment of the irresponsible authority of the delegate of the Crown, or towards fresh experiments in responsible government. But the grave economic embarrassments of the islands will not at present encourage any tendency in the latter direction, which is already sufficiently restrained by a sense of the predominance in numbers of uneducated masses of black population. The experiences of San Domingo are generally regarded as a warning, but the experiments that may be expected in the government of Cuba and Puerto Rico may afford some help in the solution of a problem confessedly difficult.

CHAPTER III

SELF-GOVERNING COLONIES

Self-government in the colonies

IT has been seen how the autocratical character of a Crown colony may be modified by the introduction of a consultative Assembly wholly or partially elected; and it can be easily understood by what processes of gradual and tentative change the transformation is carried on until the colony is endowed with the amplest freedom of responsible government. This has been attained in many colonies; indeed in all those where the population is practically of exclusive European origin. But the result has nowhere been reached all at once. The authority of a local Parliament and the responsibility of Ministers to it have followed intermediate stages, and even when these have been established, certain subjects of legislation and of administration have been often reserved from parliamentary control, and only subsequently brought under it. The government of aboriginal inhabitants where they exist in any number has often been thus reserved under the direct care of the Governor acting under the direction of the Secretary of State, and assisted by a department specially organised for the purpose. Such restrictions have sooner or later disappeared, and self-governing colonies are, so far as their own areas are concerned, completely

liament in the constitution of the Canadian Dominion or in the constitutions of the Australian colonies, except at the express desire of the colonies themselves. The Acts of Parliament which do run everywhere are so passed from considerations of general convenience, and are supported by general concurrence. Recent history rather exhibits the spectacle of the home Government yielding to colonial wishes than of colonial Governments yielding to home policy. The Crown is under treaty obligations with the Emperor of China to allow freedom of immigration and of trade to Chinese subjects. But the Australian legislatures have passed Acts, to which the royal assent has after some demur been given, restricting or even prohibiting the entrance of Chinese within their territories. Natal has a considerable population of Indian coolies, originally immigrant labourers, and now settled and prosperous as agriculturalists and tradesmen. Under the laws of Natal these subjects of the Crown would have been *prima facie* entitled to the local franchises; but they have been disabled by statute as persons who would have had no franchise in their country of origin, and the statute has not been disallowed by the Crown. Every colony has the control of its own tariff, but was formerly bound by the treaties the Crown had made with foreign powers, providing that no discriminating duties should be imposed on the produce of the countries of such powers imported into any part of Her Majesty's dominions. Some colonies wished to be relieved from the obligation, and in deference to them the treaties containing it were in 1897 denounced, so that the colonies are enabled to impose differential duties where the United

emancipated. The Governor as the representative of the Crown has a right of veto, but this may almost be said to have passed into desuetude. He has also the power of reserving his assent to a statute until it has been sent home for the consideration of the Secretary of State; and he is instructed to exercise this power wherever any proposed legislation appears to extend beyond the limits of the colony or to affect imperial relations. Amendments of the law of marriage were at one time thus reserved, but have not been so treated for a generation.

derives its sanction from the Imperial Parliament,

Every step however in the development of a colony has been made directly or indirectly under the sanction of the Imperial Parliament. The authorisation of its constitution has been effected by an Act of Parliament. Where its provisions have been modified, and where the control from home has been relaxed, such modifications and relaxations have been effected with the express or tacit assent of the Secretary of State acting under his responsibility to the Imperial Parliament. Graver changes such as the federation of separate colonies, though originating in the colonies themselves, are carried into effect by Imperial Acts. Legally all colonial constitutions derive their origin from Parliament, and live and move with its permission. An Act of Parliament, if so expressed, runs everywhere within the dominions of the Crown; and reference has already been made to the fact that the West Indian constitutions have been suspended and abrogated by Acts of Parliament. This supremacy must however be understood as largely limited in fact if not in theory. It is inconceivable that any change should be made by Par-

liament in the constitution of the Canadian Dominion or in the constitutions of the Australian colonies, except at the express desire of the colonies themselves. The Acts of Parliament which do run everywhere are so passed from considerations of general convenience, and are supported by general concurrence. Recent history rather exhibits the spectacle of the home Government yielding to colonial wishes than of colonial Governments yielding to home policy. The Crown is under treaty obligations with the Emperor of China to allow freedom of immigration and of trade to Chinese subjects. But the Australian legislatures have passed Acts, to which the royal assent has after some demur been given, restricting or even prohibiting the entrance of Chinese within their territories. Natal has a considerable population of Indian coolies, originally immigrant labourers, and now settled and prosperous as agriculturalists and tradesmen. Under the laws of Natal these subjects of the Crown would have been *prima facie* entitled to the local franchises; but they have been disabled by statute as persons who would have had no franchise in their country of origin, and the statute has not been disallowed by the Crown. Every colony has the control of its own tariff, but was formerly bound by the treaties the Crown had made with foreign powers, providing that no discriminating duties should be imposed on the produce of the countries of such powers imported into any part of Her Majesty's dominions. Some colonies wished to be relieved from the obligation, and in deference to them the treaties containing it were in 1897 denounced, so that the colonies are enabled to impose differential duties where the United

which defers however to colonial opinion,

especially in regard to fiscal policy.

and Prince Edward Island; of the vast territory under the authority of the Hudson Bay Company, a Chartered Company dating from the times of Charles II.; and of British Columbia, which had then recently passed out of the status of a Crown Colony. Canada proper contained two provinces, Lower and Upper Canada, very dissimilar from one another in character — the first almost wholly French and Catholic, the second mainly of English and Scotch origin and Protestant. The colony was organised on the principle of equal representation of the two provinces, and the result had been for some time a succession of Ministries with very small majorities and feeble in power; whilst the inhabitants of each province resented the ties strictly binding them together. An issue to what threatened to be a deadlock was found in the willingness of Nova Scotia and New Brunswick to be united with the two Canadas as four provinces of one Federated Dominion. After much negotiation between the leaders of parties throughout the four, a scheme of Union was drawn up which, being approved by the Colonial Office, was incorporated in an Act of Parliament of 1867 creating the Dominion of Canada. It may be noted that the question of Federation was not discussed in General Elections throughout the Provinces nor was there anywhere a reference of the proposed union to anything in the nature of a plebiscite; and it was indeed asserted at the time that a majority of the inhabitants of Nova Scotia opposed the project. Under the Act of 1867 a Dominion Parliament was constituted consisting of a House of Commons and a Senate. In the House of Commons, Lower Canada, henceforth called the Province of Quebec, was always to have sixty-five members, whilst

the other Provinces were to be represented by a number of members bearing the same proportion to sixty-five that their population might bear to the population of Quebec, the allotment of members being revised every ten years after the Dominion census was taken. The Act provides for a General Election every five years unless anticipated by an earlier dissolution. The Senate was to consist of seventy-two members nominated as already stated for life, twenty-four each for Quebec and Ontario, and twelve each for Nova Scotia and New Brunswick; and there is a provision also for an increased number of members not exceeding six to facilitate overcoming any possible deadlock. The provinces Quebec, Ontario (the new name for Upper Canada), Nova Scotia, and New Brunswick retained, or were endowed with, local legislatures (in the case of Ontario with a single chamber), and were placed under the administration of Lieutenant-Governors, to be nominated by the Governor-General of the Dominion on the advice of his Ministers; the Governor-General himself being nominated by the Crown. The Act partitioned legislative powers between the Dominion and the Provinces, giving however concurrent powers in relation to some specific subjects, but providing that whatever was not specially assigned to the Provinces should be reserved to the Dominion; and in Dominion and Provinces alike Responsible Government was established. The Provinces were placed under the Dominion much as colonies in general are under the home authority. The Governors-General for example have a veto on provincial legislation; and it is now established, though at first doubted, that this veto must be exercised under the advice of their responsible Minis-

ters. The interpretation of the Act lies within the competency of any Canadian Court, when raised in a case coming before it; and appeals from the decisions of such Courts may ultimately be carried to the Judicial Committee of the Privy Council; but there is also a special provision for submitting to this Committee original questions concerning the interpretation of the Act.

The Dominion Act gave to the Dominion Parliament exclusive powers of raising Customs and Excise duties within the Dominion, and as the federated provinces had, whilst independent colonies, largely relied upon these duties for the means of meeting their current expenditure and the charges of their several debts, it became necessary that the Act should contain a financial transaction providing some aid for the provinces in the future. Under it the existing debts were fused into one Dominion debt, and to compensate for the inequalities of the relief thus given and to provide funds in help of provincial expenditures, it was enacted that subvention should be made from the Dominion Treasury to the several provinces, partly of fixed annual payments and partly of an allowance according to population, which latter would also on certain conditions become fixed annual payments. To New Brunswick a special additional subvention was given for a term of ten years. The financial provisions of the Act of 1867 have however been often readjusted, and the admission of every fresh province has involved new financial provisions relative to it. In all these changes the principle of Dominion subvention to provincial treasuries has gained strength. It remains to notice briefly the new

provinces which have been incorporated into the Dominion. The rights of administration and of government of the Hudson Bay Company were acquired by agreement leaving the Company as a trading Corporation, and out of this region the Province of Manitoba was in 1870 created with a legislature of its own, and a representation in the Dominion Parliament, and a special financial arrangement, so that Manitoba should stand on the same footing as the other four provinces of the Dominion. The possessions of the Hudson Bay Company outside Manitoba remained as territory under the direct authority of the Dominion government, and in course of time new provinces may be carved out of it. In 1871 British Columbia joined the Dominion under conditions similar in character, and this was followed by Prince Edward Island in 1873.

Newfoundland is the only colony in North America now outside the Dominion, and negotiations have several times been commenced with a view to its incorporation, but for special reasons the prospect of its Union with Canada has of late years rather receded than advanced.

Australian federation.

More recently steps have been taken to bring about a federation of the Australian colonies, and a plan for this purpose is now being put into execution. Originally drafted and re-drafted, corrected, and revised in Australia, it there received parliamentary and plebiscitary sanction in New South Wales, Victoria, South Australia, and Tasmania; and was forwarded home as a scheme for the union of these four older colonies. Queensland however came into the plan before it was ratified by the Imperial Parliament, and the adhesion of

Western Australia has also been secured, so that the federation may now be described as comprising all Australia. This new constitution differs in many respects from its Canadian predecessor. The separate colonies retain a larger measure of independent existence, although it would be competent for them to become more and more incorporated in and subordinated to the Commonwealth, as the union is to be henceforth entitled. Each state will for example continue to receive a Governor nominated by the Queen on the advice of the Imperial Ministers, and the legislation of each state within the limits of its authority is not subject to the Government of the Commonwealth. It would seem also that, according to the true reading of the Commonwealth Act, the existing right of appeal from a State High Court direct to the Queen in Council would exist concurrently with the right of appeal to the Federal High Court until otherwise enacted by the state legislature.[1] The powers of legislation conferred on the Commonwealth Parliament are specifically mentioned, and the State Parliaments enjoy general reservation of powers not transferred. The separate state is thus left in a position of independence which has no parallel in the Canadian constitution. The main matters handed over to the Commonwealth Parliament are trade and commerce and the imposition of customs and excise duties (so that trade shall be absolutely free throughout the Commonwealth), the currency, banking and railway laws in respect of banks and railways extending beyond the limits of single states, postal services, marriage and

[1] The question of an ultimate appeal to the Queen in Council through the Federal High Court is not here dealt with.

divorce, and the organisation of the defensive forces of the Commonwealth.

Constitution of Commonwealth.

The Commonwealth will have at its head a Governor-General appointed by the Crown who will act under the advice of Ministers responsible to the Commonwealth Parliament; and this will consist of a Senate in which each state will have six members, and a House of Representatives containing approximately twice as many members as the Senate allotted among the states in proportion to their population as shown at each decennial census. The senators are to be chosen for a term of six years, one-half retiring every third year, and are to be elected in each state by the electors for the House of Representatives; but in the election of senators each state is to be treated as one undivided constituency except perhaps Queensland, where subdivision is possible. The House of Representatives is to be chosen for three years by the same persons who are voters for the House of Representatives in each separate state. The Legislature of each state may ordain the electoral divisions of the state, until the Parliament of the Commonwealth takes this matter into its own hands; and in the absence of provision by the Legislature of the state or Commonwealth the state is to be one constituency for the election of its representatives. Both Senate and House may be simultaneously dissolved. In the division of functions between Senate and House the latter has the initiation of all financial legislation, and the Senate is debarred from amending tax bills, but it is empowered to return such bills to the House with suggestions of amendment submitted for consideration. There are provisions against the abuse of the exclusive

powers of the House on matters of finance;—nothing must be tacked to an Appropriation Bill; Custom duties must be dealt with in a Bill by themselves; Excise duties must be similarly isolated. It is indeed provided that a Tax Bill shall deal with one subject of taxation only, and foreign matter introduced in any taxing bill is of no effect. The prohibition of tacking extraneous enactments to a Finance Bill is but a formal expression of the principle tacitly observed at home, but the severe separation of taxing proposals from one another and the liberty allowed to the Senate of suggesting amendments to Finance Bills are limitations of the unqualified supremacy insisted upon by our own House of Commons.

Financial settlement.

In Australia as in Canada the transfer of Customs and Excise duties to the federated Parliament has necessitated the establishment of financial relations between the Commonwealth and the states. There is no pooling of state debts at the outset; but it is suggested as possible, and meanwhile accounts will be kept of the shares of the revenue of Customs and Excise duties attributable to the consumption of the articles subject to them within each state, and against the credit thus established is debited the share of the cost of Commonwealth government due from each state in proportion to its population, and the balance is paid over to the state. There is no provision in case of a balance against the state, and it appears to be assumed that these indirect taxes will always be maintained high enough to ensure a surplus.

Provision for a deadlock.

The Commonwealth constitution contains many transitory provisions which have not been noticed in the

foregoing sketch, but there remain two other matters which require to be mentioned. The first is the provision for the solution of a deadlock between the Senate and the House of Representatives. When a measure insisted upon by the House of Representatives has been rejected twice in the same or in two consecutive sessions by the Senate, the Governor-General is empowered to dissolve both Houses simultaneously so that an appeal may be made to the constituencies. If the newly-elected Houses still fail to come to an agreement the Governor-General may convene a joint sitting, at which an absolute majority of the members of both Houses voting together shall decide the question at issue.

Amendment of Constitution.

The second matter to be noticed is the provision for the amendment of the constitution. Many important clauses in the Commonwealth Act are expressly subjected to alteration by the legislative authority of the Commonwealth Parliament; but the Parliament is not made omnipotent like the Imperial Parliament at home. The machinery for constitutional amendment is elaborate, requiring time and a concurrence of voting forces to set it in effective motion. The amendment must first be passed by both Senate and House, but the Governor-General of the Commonwealth may take up an amendment twice passed by an absolute majority of one House with or without alterations suggested by the other House, and the amendment so taken up by the Governor-General is then dealt with as if it had passed both Houses: that is, it is submitted to a plebiscitary vote of the electors in each state for the House of Representatives. If approved by a majority of states and

by a majority of the electors voting throughout the Commonwealth, it returns to the Governor-General for the Queen's assent.

The appeal to the Queen in Council.

A word must be added on the only subject of controversy that arose in connection with the constitution of the Commonwealth. The Bill as settled in Australia and sent home contained a clause prohibiting appeals to the Queen in Council on any question involving the interpretation of the constitution of the Commonwealth or of a state unless the public interest of some other part of the Queen's dominions was involved; and to this solitary provision the Imperial Government objected as touching a matter extending beyond what may be called the domestic interests of Australia. Ultimately the difficulty was settled by the deletion of the provision and the reservation of all rights of appeal to the Queen in Council, subject to any future legislation on the subject by the Commonwealth Parliament which must be specially held over, if passed, for the sanction of the Crown. It may be doubted whether the point is of the importance attributed to it in the height of the controversy, and it may be left to the public judgment of the future in Australia and at home.

Although the framers of the Commonwealth Bill in some important points copied the precedent of the United States rather than that of the Dominion, the success of the Canadian Federation doubtless stimulated their enterprise. A similar situation is attended with similar wants, and gives promise that corresponding advantages will follow legislation of the same character. Freedom of trade between federated colonies in Australia will probably be as beneficial as freedom of trade

between the provinces of the Dominion. The movement towards Australian Federation has in any case originated in Australia itself, and the Parliament at Westminster was asked to sanction a Bill which had been worked out after many conferences between Australian statesmen, and was recommended by approving votes either of colonial parliaments or of the electors of the colony taken by way of plebiscite. If Federation is to extend elsewhere it must be amid similar circumstances. In 1877 the Imperial Parliament passed an Act for the Federation of the Queen's Dominions in South Africa. The Colonial Secretary for the time was the same person that held the seals of the Colonial Office when the Canadian Act was introduced and passed in 1867. He seems to have thought that that which had grown in North America might be transplanted to South Africa. The Act became law after much opposition with an amendment limiting its operation to five years, at the end of which it expired without anything having been done or even attempted under its provisions. Another South African confederation is anticipated by many as the ultimate sequel of the war now (1900) being waged in South Africa, but it must be left to history to reveal the final solution of the contest.

South African federation.

CHAPTER IV

INDIA

The East India Company founded, 1600.

REFERENCES have already been made to the experiences of Chartered Companies in the Niger region, in South Africa, and in the territories of the Hudson Bay Company; but the greatest illustration of the power and development of a Chartered Company is found in British India. The history of the East India Company lies outside the scope of this book. It originated in a charter granted in the last year of Elizabeth incorporating certain merchants, and giving them exclusive powers of trade, administration, and settlement in the East. This Company, at first started in opposition to the Dutch East India Company, and subsequently struggling fiercely with French competitors for ascendency, rapidly grew in power. Before the seventeenth century had elapsed it had secured the three main positions of Fort St. George in Madras, the island of Bombay, and Fort William in Bengal; and before the end of the eighteenth century it had practically ousted all European rivals from Hindustan. It carried on trade. At first the agent, it became the master of princes. It fought and conquered with an army and navy of its own and auxiliary forces hired from the Crown. It established a network of collectors with multifarious

functions, many of whom, far removed from home control, launched boldly into enterprise, relying on the principle that if their action were successful it would be approved. The original charter granted for fifteen years has been subsequently prolonged indefinitely subject to a power of revocation under which it had been from time to time modified; and as the eighteenth century advanced to a close, it became more and more apparent that the administration of such great and far-reaching functions by a Company whose primary duty was to secure good dividends for the shareholders must be radically revised. The history of Mr. Fox's Bill has been already noticed in connection with the action of the King. Mr. Pitt's Act, which followed in 1784, whilst it left to the Company all its trading privileges and its vast subordinate patronage, placed the civil and military control of its possessions under the orders of the Crown. The appointment of its highest functionaries remained indeed in the hands of the Directors, though subject to the assent of the Crown, which could at any time be withdrawn. This Act created a Board of Control, the President of which became in reality the Minister for India. His associates on the Board being Ministers with other engrossing duties were never called upon to take any part in his action. He was in this respect like the President of the Board of Trade, who has associated with him in name persons of the highest distinction who not improbably are ignorant that they are his colleagues. The Act further required that the Court of Directors of the Company should choose three of their number as a Secret Committee, and whilst the Court could

Pitt's India Act, 1784.

The Board of Control.

issue no order touching civil or military administration without the assent of the Board of Control, this Secret Committee was bound to transmit every order it received from the Board. The Board thus knew everything that was done, and could give and did give orders of its own. It was the supreme authority, checked however by the fact that the Directors could, without recourse to the Crown, recall a Governor-General, and that all the subordinate administration was under their patronage. Under this somewhat anomalous constitution British India continually advanced. Its frontiers extended under every Viceroy. The authority of native princes was reduced where it was not extinguished, and the policy became more and more favoured of superseding them altogether by direct British rule. At the same time the extension of the frontier was an extension of the area of peace. Within it the worst native customs were gradually abolished, and the organisation of the British administration, judicial and executive, so improved that justice was everywhere secured and the suspicion of corruption disappeared. The Directors established a college at Haileybury for the education of their civil servants before sending them to their posts, and one of their last acts was to renounce altogether the patronage of appointing these civil servants by throwing their posts open to competitive examination. The Company had already, upon one of the periodical renewals of its charter in 1833, been deprived of its exclusive privilege of trade, and it remained a body with great and stately traditions of authority, but with a power gradually reduced to that of patronage. In 1857 occurred

the Great Mutiny, and this produced the final change transferring the whole administration of India directly to the Crown. This was consummated by the Act of 1858.

Government of India transferred to Crown, 1858.

The Government of India remains to-day practically as it was organised under this last-named statute. On the 1st of January 1877 a proclamation at a Durbar or a gathering of vassal-princes announced that the Queen had assumed the title of Empress of India, but declared that this made no change in the standing policy of governing India so as to promote the welfare of its inhabitants. The assumption was in fact a mere change of title leaving the real course of administration undisturbed. The Act of 1858 created a Secretary of State for India, a member of the Cabinet which in its solidarity joins in his counsels and shares his responsibilities. The Act, however, associated with him a special Council of fifteen paid members appointed at first for life and now for a term of ten years with power of extending the period. The members of this Council were at first a few of the directors of the old Company associated with men who had returned home after having served in civil and military capacities in India. It is now, with the exception of a member or two chosen for their commercial knowledge and occasionally a retired Indian judge, confined to retired Indian officials, civil and military. The whole government of India is subordinate to the Secretary of State and his Council much as the government of a Crown Colony is under the Colonial Secretary, though the vastly greater sphere of its operations compels the relinquishment of details and the allowance of a greater discretion in higher

Secretary of State for India, and his Council.

matters to the Government in India. No charge can be imposed upon the revenues of India except by the authority of the Secretary of State in Council, though it is claimed that in matters of urgent necessity the Secretary of State can issue his orders without the concurrence of his Council. The Act moreover provides that no military expenditure shall be incurred at the cost of India outside the frontiers except on the authority of express votes of both Houses of Parliament.[1] Nor can additions be made to the debt of India except under Act of Parliament. In India itself the supreme authority is vested in a Governor-General who is assisted by an Executive Council of seven members (the usual term of the Governor-General and of each member being five years), one of whom, the law member, is commonly, whilst another, the finance member, is occasionally, appointed from home; and the rest, with the occasional exception of the Commander-in-Chief, are civil servants, who have become heads of departments. The Governor-General, who at least at the commencement of his term is the express depository of the policy of the Government at home, generally dominates his Executive Council, though power is reserved for any one to record his dissent from any act of administration in a minute which must be sent by the Governor-General to the Secretary of State. Next to the Executive must be named the Legislative Council, composed, as in Crown Colonies, of official and non-official members, the former being the members of the Executive Council, whilst the latter consist of natives of high rank

The Viceroy. Executive Council.

Legislative Council.

[1] This provision seems however to have been overlooked on at least one occasion, the Perak expedition of 1875.

and Europeans of commercial importance. Some non-official members are selected by the Viceroy and others recommended by provincial and other bodies, so as to enjoy some representative character; but no member is elected and all require the Viceroy's approval. The non-official may exceed the number of the official members, so that in theory the latter might be outvoted. In practice this never happens, for in truth it is rare that an indocile member appears among the nominated non-officials. No law can be passed nor tax imposed without the assent of the Legislative Council, but with respect to many matters of the highest importance its members have no initiative power; no question can be put if permission is refused, nor in the absence of any change of taxation is any vote taken on the annual Budget. A law passed by the Council and approved by the Viceroy might yet be set aside by the Secretary of State; but inasmuch as the Viceroy practically controls legislation at every stage, and is moreover in constant communication with the Secretary of State whose organ he is, the disallowance of a statute is impossible without a change of Government. It could happen only if the House of Commons passed an address for its disallowance, which would in fact be a vote of censure on the Secretary of State. Underneath the Viceroy and his Councils India is parcelled out into the Presidencies of Madras and Bombay; the Lieutenant-Governorships of Bengal, the North-West Provinces, the Punjaub and Burmah; the Commissionerships of the Central Provinces and Assam; and a large number of Protected States left under native administration. 'Residents' are attached to the chief States, and the rest are grouped

The Presidencies, etc.

under 'Political Agents,' the influence of such officers varying from extreme control to modest suggestions of advice. Bombay and Madras are under Governors usually sent from home, and they have associated with them Executive and Legislative Councils for local purposes organised on the same principles as those of the Viceroy. Bengal, the Punjaub, North-West Provinces, and Burmah have also Legislative Councils, and it may be added that the cities of Calcutta, Madras, and Bombay have municipalities containing elected elements. Bengal, Madras, Bombay, the North-West Provinces, and the Punjaub have separate judicial organisations; some members of the High Court in each of the first four being trained lawyers appointed from England, with whom are associated a member who has risen from the Civil Service, and lawyers, native and European, distinguished by their practice in the courts. A crowd of inferior courts occupies the country. The methods of supplying the higher civil servants of India established by the Court of Directors in their last years has been continued under the direct administration of the Crown. The young men who succeed in the competitive examinations at home, among whom some few natives are generally found, are assigned on their arrival in India to different posts of local administration, such as assistant-collectorships of revenue, from which they rise to collectorships, to magisterial appointments and judgeships of local courts, to commissionerships, lieutenant-governorships, and membership of the High Courts of Judicature or of Executive Councils, as has been already mentioned. It is a hierarchy, entrance into which is the result of examination,

The Indian Civil Service.

and promotion in which depends upon recognition from grade to grade by those above, ending in recognition of fitness for the highest offices by the Secretary of State. The pay and pension of these officers is secured on good behaviour, and they constitute what, by tradition of the original indentures of appointment by the Company, is known as the 'Covenanted Service.' To special services now much localised and largely supplied by natives separate appointments are made, and it still happens that some who have gone to serve as officers in the Indian Army are diverted to civil employment, and so remain permanently occupied. The army in India is composed of one-third of British troops, paid for by the Indian Government, and two-thirds of native troops, and as it has been already noted that no charge can be imposed on the revenue of India for expeditions outside it except under the authority of both Houses of Parliament, it follows that Indian troops cannot without such a vote be employed out of India at Indian expense.

Indian army.

A word must be said about the revenue of India. Customs duties are few, and till recently were free from any element of "Protection." There is a revenue from stamps, and an excise tax on liquors and another on salt; and a considerable though diminishing amount is annually realised by the profits of monopolised cultivation of opium. The largest item of revenue is however due to rent. In a great part of India the principle prevails that land is the property of the State, and that the rent which in the West goes to a private owner should go in the East into the State coffers. Under Mogul princes an intermediate class existed (zemindar) which paid variable rents to the Emperor or his deputy,

The revenue of India.

and received in turn variable rents from the ryots or actual peasant cultivators. Whether zemindars were proprietors or mere collectors is disputed, but Lord Cornwallis a century ago permanently fixed in Bengal the rents paid by this class to the State, with a view of creating an independent middle class in that province.[1] The rent revenue in Bengal is therefore fixed. Elsewhere it has remained variable, but it is in fact assessed for different terms, generally about thirty years, by civil servants called Settlement Officers to whom the duty is assigned. These men pervade their respective areas summoning before them the headmen, officers, and peasants of the several villages, and determining as the result of this inquisition the rent to be paid for another term. The task is one requiring great discretion, as it is obvious that any revision of a local inquiry must be extremely difficult; but it may be presumed that their work is generally fairly done as complaints are very rarely heard, — at least of harshness or injustice on the part of individual officers. The position of the State as landlord enforces duties which must in any case have been admitted, having regard to the other circumstances of India. The great peril of the country is an insufficient supply or distribution of water, and large irrigation works (tanks, canals, etc.) have long been the care of Indian rulers. Much has been done to extend the system of irrigation throughout the peninsula, but the great work of the British Government during the last half-century has been the construction of railroads.

The 'permanent settlement.'

'Paternal government' in India.

[1] He left unsettled the rents to be paid by the ryots to the zemindars, and it has been part of the legislative labour of the last generation to protect the Bengal ryot by some regulation of his rental.

Trunk and branch lines have been made in all directions, partly for purposes of military organisation, but on a still greater scale for the promotion by easy transport of industry and commerce; and partly again to overcome the famine consequences of partial or even extensive droughts by the establishment of facilities for moving supplies of food into distressed districts. The Government, in these as in so many other matters, occupies a kind of paternal position towards the great mass of the population; but at the same time the education and ideas of European culture are permeating what may be called the professional classes of India; and a way has yet to be found of reconciling the desire thus begotten to be associated with the government of the country with that condition of untrained submissiveness which characterises the bulk of the inhabitants of India. Natives find employment in commerce and in the courts of law. They attend University classes and obtain degrees. They enter the professions. They fill subordinate posts in the Civil Service. They may as successful candidates in competitive examinations be found in the Covenanted Service. They sit on the bench in the High Courts. Whilst thus discharging a multiplicity of functions of various grades of importance in British India proper, they see in the Protected States an administration entirely in the hands of fellow-Indians, though more or less controlled by English Residents. It is not surprising that aspiration should exist for a larger and more independent share in the government of India, and these aspirations have found vent in self-constituted national Congresses, which have met annually to discuss Indian affairs and to pass resolutions

The political problem of India's future.

United States; and thereupon followed a rapid and almost continuous decline in the relation of the rupee to the sovereign. Whether this was due to an increased value in gold itself, or to a decreased value in silver, or to both movements, is disputed; but the result was that the rupee fell till, instead of one-tenth, it was more like one-eighteenth of a sovereign. This imposed great difficulties on Indian Finance Ministers, since India had incurred a large debt in gold, and was under the obligation of paying not only the interest of this debt but many salaries and pensions in the same metal. The Government in India became alarmed, and in 1878 appealed to the Secretary of State for permission to close Indian mints to silver. But the Secretary of State, after consulting a committee of experts, did not see his way to approve this step. The depreciation continued, and in 1892 the Indian Government again appealed, and the Secretary of State, having consulted another committee of experts, was encouraged in 1894 to grant the appeal on the condition that enough would be done if the rupee rose to one-fifteenth of a sovereign. An Indian Act was immediately passed embodying this resolution, and with the stoppage of coinage the rupee gradually rose to the level of one-fifteenth. But whilst the Indian Government was always ready to supply rupees for sovereigns at this rate, it was under no obligation to supply sovereigns for rupees; and many proposals for establishing this latter obligation having been made in India the Secretary of State was again solicited in 1898 to adopt one of them. He referred the matter to a third committee, which recommended the rejection of all these proposals and the maintenance

of the *status quo*. This recommendation he has adopted, and subsequent experience seems to have proved its wisdom. Throughout all this period the action of the Indian Government and of the successive Secretaries of State has been canvassed out of doors both in India and in Great Britain, and has been the subject of repeated debates in the House of Commons. Nor could the resolutions of the Secretaries of State have been maintained, if they had not received implicitly or explicitly the approval of the House of Commons. The Indian Government, public discussion, committees of experts, and Secretaries of State all work together to produce a result which Parliament sanctions. The problem of the currency is an illustration not differing in the method of its solution from other problems which have from time to time to be determined in fulfilment of the duty of governing India.

CHAPTER V

FOREIGN RELATIONS

Foreign relations in the hands of the Crown

THE Crown represents the nation in all relations with foreign powers. It sends its Ambassadors and Ministers abroad, and receives in turn Ambassadors and Ministers accredited to its court. Every agreement made with a foreign power in times of peace is made in the name of the Crown. Every declaration of war is a declaration in the same name. It is indeed true that many agreements are formally made subject to their fulfilment by Parliament. Any agreement for example to guarantee a loan, to make a subsidy, or to change customs duties require the concurrence of Parliament to become effective; and the necessity for such a concurrence is always reserved in the treaty. Treaties of peace very commonly, though not necessarily, involve articles which must be invalid without parliamentary support. Whether a cession of territory requires such sanction is disputed. There are decisions of the Privy Council pointing to a negative conclusion; but the cession of Heligoland in 1890 was incorporated in a Bill submitted to Parliament. It has often been argued that the power of the Crown to declare war should be limited by the necessity of direct parliamentary sanction; and the provision in the Constitution of the United States requiring the concurrence of the Senate in such a case has been

quoted to support the argument. It may however be remembered in the first place that a declaration of war, like every other act of the Crown, can only be made on the responsibility of a Minister; and no Minister would advise such a step without being well assured of parliamentary support — greater confidence may perhaps be placed in the sense of responsibility of a Minister who has to recommend than of an Assembly which has to concur — and in the second place that a declaration of war necessarily involves a demand for money to meet the expenditure of war, and Parliament must be immediately summoned and asked for the necessary supplies. This doubtless comes after the fatal step has been taken, and it may be urged that some members of the House of Commons might be found to oppose a declaration of war who would not oppose a grant of supplies after war had been declared; but this is doubtful. Wars have been rarely or never undertaken upon such narrow balances of opinion, and although Ministers have been known to inflame the public mind, it has perhaps oftener happened that the nation has pushed on reluctant Ministers.

as represented by responsible Ministers.

The reliance which thinkers of a former generation were disposed to put on the sobriety of national judgment can hardly be said to have been justified by the experience of those countries in which democratic institutions have been most developed. We could not indeed introduce into our constitution any limitation like that existing in the American States without creating some new and unexampled Power among us. The senators of the United States possess an authority to which the House of Lords cannot pretend, and an

independence of transitory popular passions not to be found in the House of Commons. There is yet one more observation to be made. Although the causes of a war may be long maturing, the necessity which compels its outbreak may come too suddenly to allow a reference to a consultative authority. Even in the United States the Government has practically found itself at war with a foreign power without time to ask the concurrence of the Senate, and the difficulty has been disguised rather than overcome by describing what was war as military operations. On the whole we must believe that the power of declaring war will continue part of the prerogative of the Crown exercised on the advice of responsible Ministers.

Foreign Minister incurs full responsibility

It has been sometimes suggested that this proposition, *i.e.* that every act of the Crown is undertaken on the responsibility of a Minister, must be qualified in relation to the conduct of foreign affairs. Ministers, it is said, come and go whilst the Sovereign remains. Reference has already been made to the weight due to the prolonged experience of the Sovereign coupled with a personal knowledge of foreign princes and potentates, all which it is urged may make it fitting that the Sovereign should guide rather than follow. But whilst it is true that this influence must be weighty, it must be repeated that this cannot affect the reality of the constitutional maxim. The Minister may follow the suggestion of the Sovereign, but only by making it his own. However august the authority with which it is clothed, it must not be ranked higher than the advice that may be taken from some private Nestor to whom the Minister may listen without abating one jot of his own re-

sponsibility. Nothing can be allowed to impair the authority of the paramount principle that every act of the State rests upon ministerial advice. It would however be a perversion of this doctrine to infer that, because a Minister must advise and be responsible for his advice, he may act without consulting his Sovereign, who is invested with the power of rejecting ministerial counsels, provided other Ministers are willing to accept the responsibility of such rejection. Lord Palmerston was dismissed from the Foreign Office in the autumn of 1851 because he acted without submitting his proposed action to the Crown, and though there was perhaps a tendency at that time unduly to subordinate a Minister, the justification of his dismissal was substantially as well as theoretically complete.

though he must consult the Sovereign.

Notice must be taken of another doctrine occasionally advanced. It is said that continuity of policy must be observed in the conduct of foreign affairs. As long as this is confined to a protest against an unnecessary extension of the insincerities of parliamentary life, it may be allowed to pass. It not unfrequently happens in domestic affairs that a strenuous battle is fought over something comparatively insignificant, and a change of ministry brings about a change in the form rather than in the substance of policy. It is certainly undesirable that our relations with foreign powers should be affected by such barren controversies; but there are real and substantial issues of foreign policy which necessitate a discontinuity of method whenever the nation determines on a change. Such new departures have happened in the past and must happen again whenever the expression of the national will requires

Continuity of policy.

a substantial change in the course of foreign policy. The claim to continuity as sometimes advanced is an attempt to set up a bureaucratic independence destructive of the root principle of parliamentary government.

Organisation of Foreign Office

The organisation of the Civil Service has already been described; but something additional must be said of the department of the Foreign Office. The principle of unrestricted competition does not obtain within it. The department has two branches, more or less distinct, for home and diplomatic service, though men occasionally pass from one to the other. Each Foreign Secretary has a list of candidates made up of persons recommended to him in a manner presumably satisfactory; and when vacancies occur he selects from his list about three times as many candidates as there are vacancies to be filled, and a competitive examination is held of the selected candidates. They are all young men (under twenty-three), and a great number of them have been specially trained for the competition by a well-known tutor. The successful youths pass with little or no further experience to the lowest posts abroad, and out of recruits so obtained Secretaries of Legations, Ministers and Ambassadors are duly evolved. They pass after short intervals from court to court becoming fairly well acquainted with the society of the courts to which they are attached, but not necessarily better acquainted with the conditions of political life abroad than at home. It is scarcely remarkable that it is at times found desirable to appoint to the highest diplomatic posts persons who have not passed through these grooves of change, but who do bring to the dis-

and of Diplomatic Service.

charge of their functions some touch of closer connection with the realities of political life. The temptations of a permanent Civil Service, which have been noted at home, are evidently less checked abroad; and the State is from time to time in danger of finding itself served by a class trained under such extraneous influences that its dead weight is unconsciously thrown in a direction adverse to the policy of the chiefs whose agent it should be. It is perhaps true that the problem of the diplomatic service can never be perfectly solved. Recruiting by limited competition has certainly produced a *personnel* better prepared for the work than came from the chance appointments by favour of former generations, whilst the occasional introduction of new men into the higher posts supplies deficiencies that might otherwise be severely felt. The results of an entirely different method may be seen in the conduct of American diplomacy, where men without any special preparation are appointed straight from civil life in the United States as Ambassadors and Ministers in every continent.

Consuls.

Besides the diplomatic service already spoken of there exists a large staff of Consuls and Vice-consuls scattered over the world in the ports and places frequented by the subjects of the Crown. Their primary duty is to facilitate the transaction of business by these subjects abroad, and the Vice-consuls are commonly foreign subjects themselves, who from character and station are qualified to give the assistance required. The Consuls (chosen by favour of the Foreign Secretary) are almost universally British, and are sometimes moved from place to place by way of promotion. In

some rare cases a Consul-General or Consular Agent is found who is really a diplomat, and, it may be, as in Egypt, a diplomat of great responsibility. His subordinate title indicates that the potentate in whose territory he resides is not, or has not always been a Sovereign Prince.

Extraordinary embassies.

In addition to what may be called the normal diplomatic organisation of the United Kingdom, other agencies are called into existence on special occasions. The negotiation of a treaty touching some matter of supreme importance is often effected under the headship of some special Ambassador-extraordinary accredited for the purpose. This is naturally the case when the treaty is between this country and more than one foreign power, such as commonly happens at the close of some great war or in the development of some extended international agreement. In this last connection Conferences or Congresses are frequently called together to draw up a European or International Pact. The series of treaties governing the relations of the great European Powers towards Turkey are of this character; as are also the treaties under which the greater Powers have under different conditions extended their guarantees to some minor states. A treaty will naturally close the transactions of the Conference at The Hague held in 1899 on the invitation of the Czar for the better security of international peace. In the making of all these treaties whether at Vienna or Paris, Berlin or The Hague, special Ambassadors have been sent to represent the United Kingdom, and the Foreign Secretary himself has been often so deputed, or even, as in the case of the Congress of Berlin, the Prime Minister and

Conferences.

the Foreign Secretary have been jointly charged with this transcendent duty.

Treaties bind the nation, though made without consent of Parliament,

The references in the last paragraph recall a question of considerable importance. All the treaties named were in due time published for the information of the country; but, being made under the advice of responsible Ministers by the royal prerogative, they have not commonly required the express assent of Parliament, since they contained no obligation the immediate fulfilment of which demanded the concurrence of Parliament. It is not the less true that a treaty so made and published is as binding upon the nation as any treaty can be, and the obligation to fulfil it is no less valid than it would have been had it been formally approved by the nation in Parliament. No treaty indeed can be said to be binding for ever. Its obligations depend upon conditions and circumstances, and it is one of the most difficult and delicate problems of international casuistry to determine when it may be claimed that the covenants of a treaty have become obsolete. But apart from this standing qualification, it must be repeated that a treaty made and published in the way suggested is binding on the nation without formal sanction by the representatives of the nation. The question arises how far such a treaty would be binding if it were not published. Secret treaties were made in former centuries to which the Kings of Great Britain and Ireland were parties; and in our own time treaties have been concluded between Foreign Powers, such as the Drei Kaiser Bund, the Triple Alliance, and the Dual Alliance, sometimes without any notification of their existence, sometimes with an announcement that they had

but not unless they are published.

been contracted but without any precise statement of their contents. It is not known that any secret treaty has been thus made in this century by the British Crown. The invitation to enter the Holy Alliance was rather private and personal than secret, but Lord Castlereagh met it by the statement that the Constitution of the United Kingdom debarred the Crown from entering upon such engagements as were proposed. It has more recently been categorically asserted by persons affecting to speak with knowledge and authority that the United Kingdom had been pledged by treaty to take a definite action in relation to Italy in certain contingencies, but it is not believed that these statements are exact, if they have any foundation whatever. At most they could be no more than the expression of intention on the part of a particular Minister, and therefore limited by his power; but could such a thing have happened as the making and ratifying of a formal treaty without communicating it to Parliament, it must be held that it would in no way bind the nation, which would be free to accept or repudiate its proposed obligations whenever they should be made public. It seems contrary to the fundamental principles of a parliamentary constitution that a nation should be bound by obligations, upon the policy or impolicy of which its representatives have had no power of pronouncing an opinion since they have been kept in absolute ignorance of their existence.

CHAPTER VI

FUTURE GROWTH OF THE CONSTITUTION

The present constitution of the Empire not permanent.

IT has appeared that the Government of the United Kingdom is in a very real and direct sense discharged by Ministers advising the Crown, and possessing the confidence and support of Parliament which embodies the national will. An attempt has been made to explain the provisions intended to secure the identity of mind of the nation, of Parliament, and of Ministers; and further suggestions have been made as to the influences brought to bear upon the development and manifestations of this identical mind in which power is seen to reside. All this makes up the practical government of the United Kingdom. The same authority, no less really, though apparently with not quite the same directness, rules over the Crown Colonies and Dependencies including the great Dependency of India. Over the Self-Governing Colonies its authority remains technically supreme, but is in truth much more limited. Each of them is now perfectly free to make laws for its internal government, to impose tariffs, and to negotiate commercial treaties at its discretion, and proposals have even been discussed for differentiating in a hostile manner against the imposts of the United Kingdom. The real overruling authority of the Home Government is in respect of peace or war, since other foreign relations are scarcely controlled; and even in respect of peace or

Rule of Home Government imperceptible during peace.

war its authority may be said to have been for a long time dormant since it has made only for peace. Difficulty can scarcely arise except in case of war, when it may prove real; and the apprehension of it at the outbreak of the war with the Boer Republics produced the startling suggestion that in that conflict the Cape Colony would be neutral. During years of peace there is no pressure of coercive authority. It is only in a season of war that a colony is subjected to pressure, through restraint on trade, acts of hostility on the part of the enemy, and the penalties which may befall those who find themselves belligerents. The contributions in men and money that may be asked for, if not levied, form another part of the possible consequences of war. In view however of these contingencies, it must not be forgotten that if the conduct of foreign affairs, upon which issues of peace and war depend, remain in the hands of the Government of the United Kingdom, it is also true that the whole cost of government in its relation to foreign powers and of the Army and Navy, with a comparatively small deduction, is borne by the Parliament of the United Kingdom. Quite recently Australia and the Cape Colony have undertaken certain naval charges; but the amounts thus contributed, though betokening a spirit that deserves recognition, are in themselves comparatively insignificant.

Movement towards federation.

The organisation of the Empire described in the last paragraph cannot be regarded as in itself full of the promise of permanence; and it is not unnatural that many persons have been led to study the question of the possibility of improving it. The difficulty revealed but not developed in South Africa might break out in a more

serious form elsewhere. The Ministers at the Cape stood alone among colonial governments in their attitude of hesitation or of opposition, but in other circumstances the self-governing Dominion of Canada at one time and the Commonwealth of Australia at another might be found protesting against a war in which the Imperial Government threatened to involve the Empire. Such a contingency may not be probable; but we cannot be certain that the policy of the Government will always command colonial approval, and it is not surprising that many should seek a development that would afford some security of the imperial unity of purpose under all chances. Many other circumstances have tended to foster a desire for some new form of Imperial organisation. The enquiry has been stimulated in recent years by the success of the federation of the Canadian Provinces. It has been already seen how this Federation has grown in British North America, and how its example has inspired the politicians of Australia to undertake the formation of a Federation of the Australian Colonies. It is asked why the lesson should not be carried further and extend to a Federation of the British Empire. Associations have been formed for the promotion of this great object, but it cannot be said that they have as yet produced any practical result. Some difficulties are obvious. The Canadian Dominion is, and the Australian Commonwealth will be, a Customs and Excise Union. This is comparatively easy in each case, for if the Canadian Provinces do not exactly lie within a ring-fence, they are so nearly adjacent that the organisation of a common Customs has not been difficult; and for similar reasons it may be expected to work with ease in Aus-

Difficulties of a Customs Union.

tralia. The contiguity of the Provinces of the Colonies brings also into clearest light the advantages of destroying all barriers to trade between them. If however the mind passes to the conception of a common Customs tariff and common Excise duties for Australia and Canada, we feel at once the difficulties involved in such a proposition. There can be no constant interchange of persons and things between the two units such as prevails between the component parts of each, and whilst the physical conditions of the problem are thus different, there is an added difficulty in conceiving the process by which common duties could be agreed upon and the distribution of the accruing revenue regulated. It has not been found easy to bring Cuba and Puerto Rico, near as they are to the American continent, within the tariff of the United States. The difficulty of organising like duties throughout the whole Empire would scarcely be less than that of establishing a partnership between Australia and Canada. The partial consideration of the case thus given will have suggested another difficulty. The Canadian Dominion is a Federation of Provinces each of which already possessed self-government. The same is true of the Australian Commonwealth. Each is an example of the partnership of equals. If Federation were to proceed on these lines it would be a Federation of the United Kingdom and the Self-Governing Colonies only, whilst the Crown Colonies and Dependencies of the Crown would pass under the control of the Parliament of the new Federation, just as they now lie under the control of the Parliament of the United Kingdom. This limitation of the application of the idea would not do away with — it would

scarcely diminish — the difficulty of setting up a common tariff. The foregoing considerations would apparently lead to the conclusion that, if any steps are taken towards Imperial Federation, no attempts should at first be made to establish common trade duties. A Union of the self-governing elements of the Empire might be entertained for the limited purpose of establishing a common Army, a common Navy, a common government of dependencies, and a common control of foreign relations, but it must not be concealed that even this limited federation would have difficulties of its own. If the charge of the Army and Navy is to become imperial, and no imperial system of Customs and Excise duties is practicable, contributions would have to be levied in some prescribed ratios from the component parts of the Empire, and such contributions would require revision at stated periods. But above and beyond this lies the construction of the common Government. The first thought is naturally to follow the precedent of the existing Parliament of the United Kingdom as it has been followed in Canada, and with some variations in Australia. Proceeding from this principle, a House of Commons would be established in which the different parts of the Empire would be represented in proportion to their population; in which case the representation of the United Kingdom would outnumber, and if united could defeat, the combination of all the rest. This should not be alarming since, in relation to the matters that would come under the common Federated Parliament, the predominant party of the existing Home Parliament overrules the whole Empire. If a majority at Westminster can now determine issues of peace and

Federation for imperial defence.

A Federal Parliament.

war affecting the colonies of the farthest West and South there would be a diminution and not an aggravation of the influence of the United Kingdom in a change which would associate a mixed representation of it with the representatives of the Self-Governing Colonies. It is in the task of constructing the Second Chamber that the greatest, perhaps the insuperable, difficulty lies. Very few would be prepared to dispense with a Second Chamber altogether, and these few would probably suggest as a substitute some internal method of controlling the action of the single House which would bring its own difficulties. Those who desire Imperial Federation in any shape must face the construction of the Senate. Here unfortunately precedents do not help us. The House of Lords discharges its functions as a branch of the Parliament of the United Kingdom, but no one has seen the possibility of reproducing it elsewhere. In different colonies different experiments have been tried, and with the results of their experience before them the framers of the Canadian constitution have adopted one principle, and the framers of the Australian constitution another. The latter, which gives each colony equal representation in the second House, cannot be entertained as a practical suggestion towards Imperial Federation, whilst the former, allowing life-Senators to be nominated on the advice of the Ministers of the day, has not proved a commanding success. The separate Parliaments of the federal elements might be authorised to elect Senators not of an equal number as in the United States but in some proportion to their contributions to the common cost of the Federation; but if an attempt is made to

The Second Chamber the main difficulty.

follow out this suggestion in detail by considering how such Senators should be chosen, what should be their tenure of office, and whether the body should be recruited in parts or all together, it must be soon felt that speculation is proceeding far ahead of the point to which the common sense of the Empire is prepared to follow. It would not be wonderful if the glimpses of such a novel and strange machinery should produce a recoil, and lead to the conclusion either that Imperial Federation must be given up altogether or that it would be better in the first place to be content with constitutional delegations from each self-governing part of the Empire, to which the Ministers for Foreign Affairs, for the Dependencies, and for the Army and Navy should make account and be responsible. This suggestion raises again the question of the relative numbers of such delegations, and if this difficulty were overcome practical men would ask whether the experience of Austria-Hungary was to be regarded as the recommendation of the proposed system, and whether apart from this it was conceivable that the Parliament of the United Kingdom should be prepared to hand over its highest functions to a combination in which it would indeed have a voice, but whose character and future action no man could pretend to foresee. The conclusion would be that on the whole we had better wait. The government of the Empire has been slowly developed out of the past. It has grown to be what it is. It will probably continue to grow, adapting itself to new circumstances and satisfying new necessities. The subordinate Federations which have come and are coming into being are part, but only part, of this movement. In the fulness of

A more modest scheme.

Any change must be tentative.

time they have come into being, and it is not yet known what they will be. Still less can it be discerned how the evolution of the problem of the government of subject-races will result in an association of the governing and the governed — an incorporation of the latter in the new citizenship, select perhaps at first, but widening with time as tried and tested by experience. We may wait and watch what will follow, not altogether stumbling in darkness, but conscious that we can peer but a little forward on the path which we may hope will preserve in the future the continuity of the past.

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